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THE BOOK OF CHURCH LAW



THE

BOOK OF CHURCH LAW

BEING AN EXPOSITION OF THE

LEGAL RIGHTS AND DUTIES OF THE PAROCHIAL CLERGY AND THE LAITY

OF

The Church of England

BY THE

REV. JOHN HENRY BLUNT, M.A., F.S.A.

AUTHOR OF "DIRECTORIUM PASTORALE," AND EDITOR OF "THE ANNOTATED BOOK OF COMMON PRAYER," "DICTIONARY OF THEOLOGY," ETC. ETC.

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THE CHURCH AND ITS LAWS.

Chapter I.

THE CONSTITUTIONAL STATUS OF THE CHURCH OF ENGLAND.

THE CHURCH OF ENGLAND consists of the clergy and laity of the two provinces of Canterbury and York; those provinces containing twenty-eight dioceses, and being conterminous with the fifty-two counties of England and Wales, supplemented by the Channel Islands and the Isle of Man.

Definition of the Church of England.

The CLERGY of the Church of England are "all persons in Holy Orders, and in ecclesiastical offices,"[1] within the boundaries of those two provinces, numbering two archbishops, twenty-six bishops, and about eighteen thousand priests and deacons.

Definition of the clergy.

The LAITY of the Church of England are, theoretically, all "such of the people as are not comprehended under the denomination of clergy."[2] But this comprehensive

[1] Blackstone's *Com.*, I. xi.

[2] Ibid. xii.

definition must be modified to meet the fact that a large number of the people altogether disconnect themselves from the Church of England, and cannot therefore be reckoned among its lay people. In a stricter sense the laity of the Church of England are, consequently, those within the territorial boundaries of its two provinces who have not by any overt act declared their dissent from its communion. In a still more contracted sense the term is limited to those who comply with the canonical requirement respecting communion, by receiving the Holy Communion "at the least thrice in the year (whereof the feast of Easter to be one), according as they are appointed by the Book of Common Prayer." [Canon xxi.] But in the absence of any legislative definition of the term "layman of the Church of England," it must be ordinarily interpreted as meaning one not in Holy Orders, who signifies a general assent to the doctrines and practices of that Church by customarily using its ministrations.[1]

Definition of the laity.

The Church of England of the present day is legally, as well as historically, continuous with that of ancient times; that continuity being founded on a regular succession of bishops from the apostolic age, and not being broken by the Reformation. In mediæval Acts of Parliament it is called by the same name as at present, "Ecclesia Anglicana" [25 Edw. I., ch. 1, A.D. 1297], "L'Eglise d'Engleterre" [25 Edw. III., st. 4, A.D. 1350]. It is so

Legal continuity of the ancient and modern Church of England.

[1] For an historical and theological account of the terms "Church," "Clergy," and "Laity," see Blunt's *Dictionary of Theology*, *s. v.*

called also in canons passed by convocation, A.D. 1416, and in the Act of Supremacy [26 Hen. VIII., ch. 1].[1]

It is part of the "one catholic and apostolic Church" named in the Nicene Creed,[2] and is in free communion with the ancient Churches of Ireland and Scotland, and with the modern Churches in American or in English territories which

Its relation to other churches.

[1] The "*Church* of Rome" was never recognised as having any *locus standi* in England in mediæval times, all acts of papal jurisdiction in England being referred to as those of the foreign *Court* of Rome ["la court de Rome," 25 Edw. III., st. 4; 13 Ric. II., st. 2, ch. 2], or of our holy father the Pope ["nostre seint piere le Pape," 13 Ric. II., st. 2, ch. 2].

[2] "Whosoever shall hereafter affirm, that the Church of England, by law established under the King's Majesty, is not a true and Apostolical Church, teaching and maintaining the doctrine of the Apostles; let him be excommunicated *ipso facto*, and not restored, but only by the Archbishop, after his repentance, and public revocation of this his wicked error." [Canon iii.]

"Provided always, that this Act, nor any thing or things therein contained, shall be hereafter interpreted or expounded that your grace, your nobles and subjects intend by the same to decline or vary from the Congregation of Christ's Church in any things concerning the very articles of the Catholick faith of Christendom, or in any other things declared by Holy Scripture and the Word of God, necessary for your and their salvations, but only to make an ordinance by policies necessary and convenient to repress vice, and for good conservation of this realm in peace, unity, and tranquillity, from rapine and spoil, ensuing much the old ancient customs of this realm in that behalf: not minding to seek for any relief, succours, or remedies for any worldly things and human laws, in any cause of necessity, but within this realm, at the hands of your highness, your heirs and successors, kings of this realm, which have, and ought to have, an imperial power and authority in the same, and not obliged in any worldly causes to any other superior." [25 Hen. VIII., ch. 21, § 13, revived by 1 Eliz. ch. 1, and still in force.]

trace their episcopal succession to the Churches of England, Scotland, or Ireland. It has never broken off communion with the churches that recognise the jurisdiction of the Pope, nor with the churches of the East; but it maintains strongly its position as an independent branch of the Catholic Church, subject to no authority external to the realm of England, except that of a general council.

The Orders of the continental and Eastern Catholic clergy have always been recognised by our law; and such clergy can be admitted to minister in Churches and Chapels of the Church of England by licence from the Archbishop of the Province in the same manner as clergy of Colonial or American Ordination. [37 and 38 Vict. ch. 77.][1]

Its relation to non-episcopal communities.

On the other hand, the episcopal system is so essentially a part of the constitution of the Church of England that no communion is recognised between it and those religious bodies in England or elsewhere which are not dependent on the episcopate for their existence. The ministrations of Scotch Presbyterian, German Lutheran, Swiss Calvinist, or English Dissenting ministers have always been considered illegal, and the positive prohibition of them dates back to the Act of Uniformity.[2] It is also affirmed by the 11th

[1] See page 189.

[2] "It is evident unto all men diligently reading the holy Scripture and ancient Authors, that from the Apostles' time there have been these Orders of Ministers in Christ's Church; Bishops, Priests, and Deacons. Which Offices were evermore had in such reverend Esti-

Canon of 1603, that no "meetings, assemblies, or congregations" of English-born subjects in England, although permitted by the law to assemble, "may rightly challenge to themselves the name of true and lawful Churches." [Canon xi., cf. x.]

The idea of the Church being one body and the State another body is one of modern introduction. In former days the Commonwealth of England and the Church of England were considered as conterminous; those who were members of the one being also members of the other. At the Reformation a practice began to be introduced of calling the clergy by the name of the Church, as in the Act of Appeals, which speaks of "the spirituality now being usually called the English Church" [24 Hen. VIII. ch. 12, A.D. 1532]; their more exact designation being the "estate ecclesiastical." [1 Eliz. ch. 1, Canon i.] There were, therefore, strictly speaking, no relations of Church and State while the civil and the ecclesiastical body were thus conterminous,

Its relation to the State.

mation, that no man might presume to execute any of them except he were first called, tried, examined, and known to have such qualities as are requisite for the same; and also by publick Prayer, with Imposition of Hands, were approved and admitted thereunto by lawful Authority. And therefore, to the intent that these Orders may be continued, and reverently used and esteemed, in the United Church of England and Ireland, no man shall be accounted or taken to be a lawful Bishop, Priest, or Deacon in the United Church of England and Ireland, or suffered to execute any of the said Functions, except he be called, tried, examined, and admitted thereunto, according to the Form hereafter following, or hath had formerly Episcopal Consecration or Ordination." [*Preface to Ordinal*, confirmed by 14 Car. II., ch. 4, §§ 10, 26.]

and the only relation at all approaching to the modern idea was that between the "estate of the clergy" and the "estate of the laity." But in modern phraseology the term "State" has come to represent not an "estate" of persons, but a concrete abstraction of the legislative and executive functions of the body politic. The term "Church," at the same time, has continued to represent not the clergy only, but those members of the body politic (clerical or lay) who are also members of the Church of England. The relations between "Church and State" are therefore the relations between all members of the Church of England, on the one hand, and, on the other, the whole body politic of the kingdom, its legislative and executive authorities.

It is now a nearly recognised principle of the English constitution that Parliament is supreme. But Parliament is an imperial body, composed of some persons who are, and some who are not, members of the Church of England, and it has to legislate for the good of the whole community. Some difficulties consequently arise in reconciling the duty of Parliament to the people at large with its duty to the Church; and the constitutional relations of the two bodies are, and are likely for some time to be, in a very unsettled condition. It would be very desirable, therefore, that the convocations of the clergy of the two provinces of which the Church of England is composed, or some other synodical assembly fairly representing the Clergy and the Church at large, should have some recognised position assigned to them in ecclesiastical legislation; Parliament still viewing such legislation as a

question in which the interests of the nation at large are also concerned.

The relations between the Church and the Crown are better settled than those between the Church and other portions of the State. The general principle of those relations is, that the Crown possesses a visitatorial and corrective jurisdiction in the Church of England, by right of which the sovereign is supreme governor over all persons and in all causes ecclesiastical, as well as over all persons and in all causes temporal, within its dominions. Thus the laity of the Church of England stand in the same relation to the Crown that any others of its subjects do: the clergy in a slightly closer relation, owing to the visitatorial power residing in the Crown, partly as the founder of so many bishoprics and other ecclesiastical benefices, and partly as the possessor of some of the power formerly exercised by the Pope. Ecclesiastical Courts are practically held under the authority of the Crown; their decisions being further subject to revision by the Crown on appeal.

The popular idea of an "Established Church"[1] is, that out of several churches the supreme government of a country chooses one to be the official religion; that the State then grants to the so established church certain exceptional privileges, and places it under certain exceptional restraints. No such selection

The Church as an establishment.

[1] The designation is derived from the phrase "as by law established in this realm," which is often used respecting the Church of England in Acts of Parliament. But this phrase has no reference to that aspect of the Church in which it is called "an establishment," merely defining its character as that of any other corporate institution might be defined.

of a church was ever made by the English State, nor has any formal compact such as this supposes been made between it and the Church of England. The Church was founded in this country, when it was a Roman province, without any communication with the State; in later times the State became Christianized by it, legalized its operations, and secured to it certain constitutional privileges. Thus a system of privilege and restraint grew up, which gives some ground for the idea mentioned; but the "establishment" of the Church has been effected in reality by its gradual assimilation with our national life, and not by Act of Parliament.

As for the endowments by which the clergy of the Church are maintained, and its divine service provided for, they have not been bestowed by the State out of the public exchequer, but have mostly been derived from money or land offered for the purpose by sovereigns, noblemen, and other persons, in their private capacity, and out of their private possessions.[1] A very large amount of the property thus given was alienated from religious to secular uses in the time of the Tudors, and this alienation was confirmed by Act of Parliament; but no corresponding endowment of the clergy by Act of Parliament is to be found.

An actual "establishment" has indeed been erected by express legislation in the case of the Presbyterian establishment of Scotland; but a comparison of its creation

[1] A certain number of churches were built in the last century which must be excepted from this general statement, their cost having been provided for by a vote of Parliament.

by Acts of Parliament with the historical continuity of the Church of England will at once show that the latter is not "by law established" in the same sense. The latter is, indeed, part of our national life, and its constitutional position is inherited from the remotest times of English history. The statutory definition of its powers and privileges, and the statutory limitation of them, have no more established the Church of England than similar definitions and acts of limitation have established the Crown of England.

The old common law of the Church and State made "heresy," interpreted as dissent from the church, a penal offence. The various Acts of Uniformity, from Edward VI. to Charles II., imposed severe penalties upon persons dissenting from the doctrines they established. Now, however, by the various Toleration Acts, the sanction of the law has been given to communities of Roman Catholic and Protestant Dissenters; the trusts for the benefit of their religious tenets are upheld; and their worship is protected from interruption. [23 and 24 Vict. ch. 32.] Thus far all religious bodies may be considered as in some sense "established" in this country.

Chapter II.

THE LAW OF THE CHURCH OF ENGLAND.

THE Church of England is governed by a system of jurisprudence made up of three elements—(1) the Common Law, (2) the Canon Law, and (3) the Statute Law. This system is the growth of many centuries, and its more ancient portions are traceable in some degree (as well as the practice of Ecclesiastical Courts) to the Civil Law of the Roman Empire.

THE COMMON LAW

Is the *lex non scripta* of England; the law, that is, which is founded upon custom, precedent, and the *dicta* of judges, and not upon Acts of Parliament. It has been collected and methodized from time to time by such writers as Glanvil, Bracton, Britton, Littleton, and Sir Edward Coke, the original sources of it being the records of courts of justice, books of reports, and judicial decisions. "This, for the most part, settles the course in which lands descend by inheritance; the manner and form of acquiring and transferring property; the solemnities and obligations of contracts; the rules of

expounding wills, deeds, and Acts of Parliament; the respective remedies of civil injuries; the several species of temporal offences, with the manner and degree of punishment; and an infinite number of minuter particulars, which diffuse themselves as extensively as the ordinary distribution of common justice requires. Thus, for example, that there shall be four superior courts of record—the Chancery, the King's Bench, the Common Pleas, and the Exchequer;[1] that the eldest son alone is heir to his ancestor; that property may be acquired and transferred by writing; that a deed is of no validity unless sealed and delivered; that wills shall be construed more favourably, and deeds more strictly; that money lent upon bond is recoverable by action of debt; that breaking the public peace is an offence, and punishable by fine and imprisonment. All these are doctrines that are not set down in any written statute or ordinance, but depend merely upon immemorial usage—that is, upon common law—for their support."[2]

Of this common law the judges are the living oracles, acquiring their knowledge of it by experience and study, and being bound by oath to decide according to its tenor.

In early English, or "Anglo-Saxon" times, there was a very intimate association between the common law of England and the Church of England; for the bishops sat side by side with the judges in its administration, and its principles were so deeply marked with religion that there was little distinction between it and the more direct law

[1] Now fused into the "High Court of Justice."

[2] Blackstone's *Com.*, I. Introd. iii. Stephens's Ed. 1858, p. 47.

of the Church. The duty of the mixed court, or "Shire-gemot" (which represented our Assize Court, and was held twice a year), was "to expound as well the law of God as the secular law;" and thus, when the bishops no longer represented the Church in the ordinary court of justice, the law there administered still bore the impress which it had received from their presence, and that impress has ever since characterized the common law of our land.

But there is also a common law peculiarly belonging to the Church of England, as well as the common law of the land. "*Jus commune ecclesiasticum*," as well as "*Jus commune laicum*," as it was defined by Mr. Justice Whitlock. [Gibson's *Codex, Introd.*] This also consists of customs, precedents, and judicial records, and has the same force in the administration of ecclesiastical matters as the other has in that of secular matters. It is, in fact, the unwritten part of ecclesiastical law.

THE CANON LAW.

This is the distinctively ecclesiastical law, consisting of the canons which have been passed in national and provincial synods, and of such foreign canons of the same description as have been adopted by custom and common law into our domestic system.

[A.] *English Canon Law.* This consists of legatine constitutions or canons, and provincial constitutions or canons.

I. Legatine constitutions are those which were passed in national synods of English bishops held under the presidency of a papal legate; and they bound the Church

of England in both its provinces. Two such national councils have left their mark upon the law of the Church of England. The first was held under Otho, legate *a latere* of Gregory IX., at St. Paul's Cathedral, A.D. 1237. [Spelm. *Conc.* ii. 218; Wilk. *Conc.* i. 647.] It is entitled in these authors, "Concilium Pan-Anglicum," and is described as being held "præsidente domino Othone . . . assidentibus sibi Archiepiscopis S. Edmundo Cant. et Waltero Eborac. necnon aliis Angliæ Episcopis." It promulgated thirty-one canons upon various subjects, the last eight being devoted to the regulation of the procedure in the ecclesiastical courts. The second was also held in St. Paul's [A.D. 1268], under the presidency of Othobon (afterwards Adrian V.), legate *a latere* of Clement IV. [Spelm. *Conc.* ii. 263; Wilk. *Conc.* ii. 1.] It is entitled in Lyndwood, "Concilium Anglicanum . . . a domino Othobono . . . celebratum præsentibus Bonifacio Cantuar. et Waltero Eborum Archiepiscopis, Episcopis, Abbatibus, Prioribus, Decanis, Archidiaconis, cum aliis Dignitatibus Ecclesiasticis." Its constitutions are fifty-three in number, many of them confirmatory of those of Otho. They are extremely comprehensive, and deal with many points connected both with the spiritual and temporal rights of the clergy.

The presence of the papal legates on these two occasions was strongly resented by the English archbishops and bishops, and was not permitted on any other occasion; but the constitutions passed by the councils were accepted without cavil. Both legates were invited, and forced on the Church, by Henry III.; national synods previously

and subsequently being summoned by, and held under the presidency of, the Archbishops of Canterbury.[1]

II. Provincial constitutions are those passed in the episcopal synods, or the regular convocations of either of the provinces of Canterbury or York, held under the presidency of the archbishop of each province respectively; and such canons were only binding on the province which framed them. The decisions of legatine and provincial synods have, however, been accepted as of equal authority, and English canonists have recorded or digested them in a continuous chronological series. The great body of the mediæval constitutions of Canterbury were also accepted and adopted by the convocation and province of York in the year 1463, and thus acquired a legislative authority throughout the whole Church of England. The following are the principal synods at which such constitutions were passed.

[1.] A synod of bishops, held at Oxford A.D. 1222, under Stephen Langton, Archbishop of Canterbury. Its deliberations resulted in fifty canons (arranged by Lyndwood on the principle adopted by Gratian in digesting the *Decretum*). It contains some important provisions as to simony and the status of beneficed clerks. [Concilium Oxoniense. Spelm. *Conc.* ii. 181; Wilk. *Conc.* i. 585.]

[2.] A convocation of the clergy, held at Westminster A.D. 1229, under Richard Grant, or Wethershed, Arch-

[1] With one exception, that summoned by Wolsey, "Ad tractandum de Reformatione tum Laicorum, tum Ecclesiasticorum," in 1523. His summons was resisted by the Convocation of Canterbury, and the final result is not known.

bishop of Canterbury. Twelve constitutions are attributed to it by some, but only five by others, as Lyndwood; and it is probable that a portion of them were passed under an earlier Archbishop Richard, A.D. 1174. [Spelm. *Conc.* ii. 191; Wilk. *Conc.* i. 622.]

[3.] There are a set of constitutions, thirty-seven in number, which bear the name of Archbishop Edmund Rich, the successor of Archbishop Grant (A.D. 1234–45); but when or where they were framed and passed is uncertain, and the personal tone adopted in some of them seems to show that they were not the result of a synodal act. They are of a highly reformatory character. [Spelm. *Conc.* ii. 190, 191; Wilk. *Conc.* i. 630.]

[4.] A synod of bishops, held at Lambeth, under Boniface, Archbishop of Canterbury, A.D. 1261. Twenty-one canons were passed by this council, some of which have a very important bearing on the amenability of the clergy to their own and the civil tribunals. [Spelm. *Conc.* ii. 305; Wilk. *Conc.* i. 746.]

[5.] A synod of bishops, held at Reading, under John Peckham, Archbishop of Canterbury, A.D. 1279. In its proceedings, which are recorded under five titles, repeated allusion is made to the constitutions of Othobon. [Spelm. *Conc.* ii. 320; Wilk. *Conc.* ii. 33.]

[6.] A synod of bishops, held at Lambeth, under the same John Peckham, A.D. 1280 (entitled in Spelman, "Constitutiones Dom. Joann. Peccham editæ in concilio Lambethensi"). It promulgated twenty-seven canons (according to Wilkins's division, thirty) on various questions, bearing both on ritual and ceremonial duties and

on the general morality of the clergy. [Spelm. *Conc.* ii. 328; Wilk. *Conc.* ii. 37.]

[7.] A convocation of the clergy, held at Merton, A.D. 1305, by Robert Winchelsey, Archbishop of Canterbury. Six important constitutions were passed, defining the rights and duties of parishioners in respect to the fabrics and ornaments of the churches, and respecting the celebration of Divine Service. [Spelm. *Conc.* ii. 431; Wilk. *Conc.* ii. 278.]

[8.] A synod of bishops, held at Oxford, A.D. 1322, by Walter Reynolds, Archbishop of Canterbury. Ten constitutions were passed respecting the duties of parish priests in respect to the sacraments and other offices of the Church. [Spelm. *Conc.* ii. 497; Wilk. *Conc.* ii. 512.]

[9.] A convocation of the clergy, held at St. Paul's, A.D. 1329, by Simon Meopham, Archbishop of Canterbury. It promulgated nine constitutions, respecting the observance of Good Friday, the Feast of the Conception, wills, oblations, and matrimony. [Wilk. *Conc.* ii. 548.]

[10.] A synod of bishops, held at London by John Stratford, Archbishop of Canterbury, A.D. 1342. It seems to have been postponed from October to March, 1342–3; and twenty-nine constitutions were framed on the two occasions, relating chiefly to reforms of the Ecclesiastical Courts. [Spelm. *Conc.* ii. 572; Wilk. *Conc.* ii. 696.]

[11.] A synod of bishops, held by Simon Sudbury, Archbishop of Canterbury, at Gloucester, A.D. 1378. It passed four important constitutions respecting confession and frequent communion. [Spelm. *Conc.* iii. 626; Wilk. *Conc.* iii. 135.]

[12.] A convocation of the clergy, held at Oxford, A.D. 1408, by Thomas Arundel, Archbishop of Canterbury, in which thirteen canons were passed against the Lollards. [Wilk. *Conc.* iii. 306.]

[13.] A convocation of the clergy, held at St. Paul's, A.D. 1416, under Henry Chicheley, Archbishop of Canterbury, in which two canons were again passed on the same subject.

[14.] A convocation of the clergy, held on March 31st, 1534, under Thomas Cranmer, Archbishop of Canterbury, passed a canon, most important in English history, declaring that "the Bishop of Rome has no greater jurisdiction conferred on him by God, in this kingdom of England, than any other foreign bishop." [Wilk. *Conc.* iii. 769.] The same canon was passed by the convocation of York, under Archbishop Lee, on May 5th, 1534. [*Ibid.* 782.]

[15.] A convocation of the clergy, held A.D. 1603, under the presidency of Richard Bancroft, Bishop of London, passed one hundred and forty-one canons, embodying the principles of many preceding canons, on subjects connected with the *status* of the church, divine worship, the Ecclesiastical Courts, and many other matters connected with the practice and discipline of the church.[1]

[1] The canons passed up to the fifteenth century were collected by William Lyndwood (Archdeacon of Canterbury, and afterwards Bishop of St. David's), in a work called *Provinciale*, of which the best edition is that printed at Oxford in 1679. They were published in English in Johnson's *Collection of all the Ecclesiastical Laws, Canons, Answers, or Rescripts . . . of the Church of England*, the original edition of which was printed in 1720, and a revised one, edited by Baron, in 1850. Wilkins's *Concilia Magnæ Britanniæ* contains all such documents down to 1717. Ayliffe's *Parergon Juris*

[16.] A convocation of the clergy, held at Westminster on April 17th, 1640, under Archbishop Laud, at which seventeen canons were passed, concerning the regal power, for the suppression of sectarianism, for uniformity in rites and ceremonies, and for the discipline and reformation of Ecclesiastical Courts. These canons were accepted by the convocation of York on the 29th of the same month, and promulgated by the Crown on June 30th, 1640.

[17.] A convocation of the clergy, held at Westminster on June 29th, 1865, under Thomas Longley, Archbishop of Canterbury, in which certain alterations were made in the canon law in relation to subscription and simony, and four new canons passed in place of the 36th, 37th, 38th, and 40th canons of 1603.

[B.] *Foreign Canon Law.*—It is a principle of the English common law and the English constitution that no foreign power has any authority in England, and that, therefore, no foreign laws have any authority either. But the common law has also permitted the adoption by English Church Courts of such foreign church laws (not inconsistent with our domestic laws) as might be a guide to them where the latter failed to decide. Thus the canon law of Europe, although never imposed upon, or accepted by, the Church of England, has had a certain weight in its

Canonici Anglicani; or, a Commentary by way of Supplement to the Canons and Constitutions of the Church of England, a valuable work, the character of which is indicated by its title, was published in 1734. The early portions of an entirely new and most trustworthy edition of Wilkins's *Concilia* have recently been issued from the Clarendon Press under the editorship of Professor Stubbs and the late Rev. A. W. Haddan.

system of ecclesiastical jurisprudence. "All the strength," says Sir Matthew Hale, "that either the papal or imperial laws have obtained in this kingdom, is only because they have been received and admitted either by the consent of Parliament, and so are part of the statute laws of the kingdom, or else by immemorial usage and custom in some particular cases and courts, and not otherwise; and therefore so far as such laws are received and allowed of here, so far they obtain, and no further; and the authority and force they have here is not founded on, or derived from, themselves; for so they bind no more with us than our laws bind in Rome or Italy. But their authority is founded merely on their being admitted and received by us, which alone gives them their authoritative essence, and qualifies their obligation."[1]

This foreign, or Roman, canon law, is composed principally of three classes of enactments: [1] The canons of councils; [2] the decrees of the Popes and Fathers, or, in other words, the constitutions made *proprio motu* from time to time by the Roman Pontiffs, and the early Fathers of the Church, and which obtained the force of law; and [3] the decretals and the canonical replies made to questions put at various times to the Roman Pontiffs. The first authorative compilation of the *Decrees* was made under Eugenius III. by Gratian, a Bolognese monk, A.D. 1151. The *Decretals* were digested and edited (and the work of Gratian revised and re-edited) by Raymond de Pennafort, under direction of Gregory IX., A.D. 1235; and finally the whole body of the canon law was edited by

[1] Hale's *Hist. Common Law*, p. 27; Vaugh., 21, 132, 327.

papal authority under Gregory XIII. This work is entitled the *Corpus Juris Canonici*, and the bulk of it consists of the *Decretum* of Gratian and the *Decretals* of Gregory IX., the remainder being made up by a book of *Decretals* of Boniface VIII. (known as the Sixth Decretals), the *Clementine Constitutions* (constitutions of Clement V.), and the two other books known as the *Extravagantes* of John XXII. and the *Extravagantes Communes*.

To whatever extent this body of law may have been accepted in other countries, in England its adoption was by no means unrestricted or unreserved; and, on more than one occasion, attempts to introduce its provisions into England were successfully resisted, on the ground that those provisions were contrary to the common law of the land. Thus, for instance, it was the attempt of the English bishops to introduce into England the canon of Alexander III. for the legitimation of children born before marriage, that elicited from the barons the famous answer, "Nolumus leges Angliæ mutari;" and it was instantly rejected as being contrary to the common law. Subject, however, to these restrictions, many of the rules of the Roman canon law have been incorporated with ours, and the English Courts have in recent times decided cases on no other authority than that of a canon of the fourth Lateran Council, accepted and recognised by English ecclesiastical law.[1]

[1] Alston (Clerk) *v.* Attlay, 7 Adol. and Ellis, 289; Burder *v.* Mavor, 6 Notes of Cases Ecclesiastical and Maritime, 1; and a more striking instance still, Stavely *v.* Ullathorne, 1 Hardre, 101, where the exemption of Cistercians from tithes by this council is recognised. The principle is clearly stated in 25 Hen. VIII. ch. 21, § 1.

Such being the body of the English and foreign canon law, it remains to be shown how far its force was modified by the "Act of Submission" [25 Hen. VIII., ch. 19].

The Act of Parliament so called was founded on an Act of Convocation passed on May 15th, 1532, in which the bishops and clergy gave their assent to the principle that convocation has no authority to pass laws except under a licence from the Crown. The assent so declared was recited in the Act of Parliament, and is as follows:—

"We, your most humble subjects, daily orators and beadsmen of your clergy of England, having one special trust and confidence in your most excellent wisdom, your princely goodness, and fervent zeal to the promotion of God's honour, and Christian religion, and also in your learning, far exceeding in our judgment the learning of all other kings and princes that we have read of, and doubting nothing but that the same shall continue and daily increase in your Majesty:

First, Do offer and promise, in verbo sacerdotii, here unto your Highness, submitting ourselves most humbly to the same, that we will never from henceforth enact, put in ure, promulgate, or execute any new canons or constitutions provincial, or any new ordinance, provincial or synodal, in our convocation, or synod, in time coming (which convocation is, always hath been, and must be assembled only by your high commandment of writ), only your Highness, by your royal assent shall license us to assemble our convocation, and to make, promulge, and execute such constitutions and ordinaments as shall be

made in the same; and thereto give your royal assent and authority.

"*Secondarily*, That whereas divers of the constitutions ordinaments, and canons, provincial or synodal, which hath been heretofore enacted, be thought to be not only much prejudicial to your prerogative royal, but also overmuch onerous to your Highness's subjects, your clergy aforesaid is contented, if it may stand so with your Highness's pleasure, that it be committed to the examination and judgment of your Grace and of thirty-two persons, whereof sixteen to be of the upper and nether house of the temporalty, and other sixteen of the clergy; all to be chosen and appointed by your most noble Grace; so that, finally, whichsoever of the said constitutions, ordinaments, or canons, provincial or synodal, shall be thought and determined by your Grace, and by the most part of the said thirty-two persons, not to stand with God's laws and the laws of your realm, the same to be abrogated, and taken away by your Grace and the clergy. And such of them as shall be seen by your Grace, and by the most part of the said thirty-two persons, to stand with God's laws and the laws of your realm, to stand in full strength and power, your Grace's most royal assent and authority once impetrate, and fully given to the same."[1]

The seventh clause of the Act of Parliament which thus defined the relation of Convocation to the Crown, and of its canons to the other laws of the realm, especially provided for the continuance of the canon law where it was not inconsistent with common and statute law: "Provided

[1] Wilk. *Conc.* iii. 574.

also that such Canons, Constitutions, Ordinances, and Synodals provincial, being already made, which be not contrariant or repugnant to the laws, statutes, and customs of this realm, nor to the damage or hurt of the king's prerogative royal, shall now still be used and executed as they were afore the making of this Act, till such time as they be viewed, searched, or otherwise ordered and determined by the said two-and-thirty persons, or the more part of them, according to the tenor, form, and effect of this present Act."[1] The commission was ultimately appointed by Edward VI. in 1551, and the result of their labours is said to be embodied in the MS. volume entitled *Reformatio Legum Ecclesiasticarum*."[2] There is much mystery, however, about the real author of this volume, and it certainly never received any confirmation from the Crown or Parliament, was not printed until 1571, and has no legal force whatever. Hence the seventh clause of the "Act of Submission" continues in its former force the whole of the canon law which is not "repugnant to the laws, statutes, and customs of the realm, nor to the damage or hurt" of the royal prerogative.

It has been decided by Lord Hardwicke that the canons of 1603 do not *proprio vigore* bind the laity, but only the clergy.[3] But Lord Hardwicke qualified this decision by adding, "I say *proprio vigore*, by their own force and authority; for there are many provisions contained in

[1] This Act [25 Hen. VIII., ch. 19] was repealed by 1 and 2 Ph. and M., ch. 8, but revived by 1 Eliz. ch. 1, § 2, and is still in force.

[2] Brit. Mus., Harl. MSS. 426.

[3] Middleton *v.* Croft, Str. Rep. 1056; 2 Atkyn's Rep. 650.

these canons which are declaratory of the ancient usage and law of the Church of England, received and allowed here, which in that respect, and by virtue of such ancient allowance will bind the laity." [See also Blackstone's *Comm. Introd.*, sect. iii.]

THE STATUTE LAW.

Since the Act of Submission of 1534 most of the ecclesiastical legislation of the country has been embodied in Acts of Parliament, the canons of 1603 being a conspicuous exception. Thus the Book of Common Prayer is embodied in the Statute 14 Car. II. ch. 4, the Act of Uniformity of 1662; and the Thirty-nine Articles of Religion are substantially, though not verbally, incorporated into 13 Eliz. ch. 12, the Act which makes subscription to them necessary on the part of the clergy, as well as into the more recent Act 28 and 29 Victoria, ch. 122. There is also a continuous stream of parliamentary legislation with reference to the temporalities and civil rights of the Church, and the bulk of the ecclesiastical statutes has grown to very large dimensions during the last century.[1]

To sum up, therefore, it may be said in conclusion that

[1] The growth of Parliamentary legislation for the Church may be seen by the following table :—

Date.	Average of Ecclesiastical Statutes.
1216–1530	Less than 1 per annum
1530–1760	2½ „
1760–1820 [G. III.]	10 „
1820–1870	25 „

the following are the several elements of church law as it is now in force in the Church of England:—

1. The common law of the realm.
2. The English canon law, ancient and modern, so far as it is not opposed to the common and statute law, or to the royal prerogative.
3. Foreign canon law, so far as it has been accepted by custom or by Act of Parliament.
4. The statute law of the realm, including the Book of Common Prayer with its Rubrics, and the Thirty-nine Articles of Religion.

It need only be added that these several elements are all binding on the clergy, but that modern canons are not binding on the laity, except in those cases in which they hold ecclesiastical offices.

Chapter III.

THE ADMINISTRATION OF CHURCH LAW.

AS the laws relating to the Church are of a mixed character, so the judicial administration of those laws is assigned to various tribunals, some of a purely ecclesiastical kind, some of a purely secular kind, and some in which the ecclesiastical and the secular elements are combined.

All questions of civil rights are of course within the jurisdiction of the Secular Courts; and so it has long been ruled that questions of dilapidations, which were once decided only in the Ecclesiastical Courts, are the subject of an action at common law. But questions respecting the orthodoxy of the clergy, their conduct in their ministrations, and their morals, are subject to the jurisdiction of the bishops, with the right of appeal from a lower to a higher court, and ultimately to the Sovereign in Council. The same authorities administer some classes of laws also in the case of the laity, such as those respecting their moral discipline in respect to incontinency, neglect or wrongdoing in the offices of churchwarden or parish clerk, the payment of some small tithes and dues, and

illegal interference with the fabric and ornaments of churches.[1]

The ordinary ecclesiastical tribunal of first instance in which the laws of the Church are administered in such cases is the *Consistory Court* of each diocese. Every bishop is, *ex-officio*, the *judex ordinarius* for his diocese in respect to all matters which come within the range of ecclesiastical law, and his "Consistory" is the ancient "Court Christian" in which his ordinary judicial authority is exercised. He does not preside over this Court in person, but by the "official principal" of his Court, who is in modern times always also his vicar-general, and usually combines the two offices under the name of Chancellor of the Diocese. The Archdeacon's Court also has jurisdiction in certain cases, especially with reference to parish clerks.

But in the case of criminal offences charged against any of his clergy, the bishop's mode of proceeding is regulated by recent legislation, which has substituted another tribunal for the ancient Diocesan Court. This is contained in the Act 3 and 4 Vict., ch. 86, entitled "An Act for better enforcing Church Discipline."[2]

Under this Act, wherever a clerk in holy orders is charged before the bishop, or there exists scandal or evil report of him, as offending against the laws ecclesiastical, the bishop may do one of two things:

[A] Issue a commission of inquiry to five persons who

[1] The jurisdiction of Ecclesiastical Courts in respect to the recovery of church rates ceased with the abolition of compulsory church rates in 1868. Matrimonial, divorce, and testamentary causes were, in 1857, transferred to secular Courts of Probate and Divorce.

[2] Appendix I.

will examine the case, take evidence, and hear the accused, in person or by his legal advisers, and report whether there is a *primâ facie* case against him or not.

This commission must not issue till fourteen days' notice has been given to the accused of the intention to issue it, the nature of the charge, and the name of the accuser, if any. Should the commission report a *primâ facie* case, then—

(1.) The bishop may (with the consent of the accused) pronounce sentence against him without further proceedings. If the accused do not consent, articles of charge must be drawn up, signed by an advocate, filed in the registry, and served on the accused. These articles may again be admitted by the accused, in which case the bishop will pronounce sentence at once. If not, the bishop hears the cause with three assessors, one of whom is to be an advocate or barrister of a certain standing, and another the dean of the cathedral, or an archdeacon, or his chancellor.

From the decision of the bishop an appeal lies to the Court of Appeal of the province (that is, the Arches Court for Canterbury, the Chancery Court of York for York),[1] and thence to the Privy Council, the appeal being heard by the Judicial Committee of the Privy Council, who report to the Sovereign; this report is confirmed by Order in Council, and is thereupon final.

(2.) After the report of the commission the bishop may, instead of hearing the cause himself, send it by letters of request to the Court of Appeal of the province direct.

[B] Without issuing a commission, or taking any step, the bishop may at once send the case in the first instance

[1] See page 32.

to the Court of Appeal of the province, by letters of request; and it was decided by the Privy Council, in the case of Sheppard *v.* Bennett [Law Rep. 2 P. C. 450], that the Court of Appeal must accept these letters of request.

The bishop may either appear as prosecutor himself, or *direct* some one to prosecute for him, or *allow* any one to prosecute. He has, it seems [Reg. *v.* Bishop of Chichester, 2 Ellis and Ellis, 209], in the first instance, a discretion, and may refuse to have any prosecution instituted. If, however, he assents so far as to issue a commission, and that commission make a *primâ facie* report, or if he sends letters of request, his discretion is gone; and any prosecutor whom he has allowed to go so far may insist on his right to continue the cause. Other persons, however—third parties—will not have such a right.

When the accused clerk has no benefice, the bishop of the diocese where the offence is committed is the bishop who acts in all the proceedings mentioned. When the accused is a beneficed clerk, the bishop of the diocese where the offence is committed is the proper person to issue a commission; but all further proceedings after the report of the commission, and all original proceedings taken without a commission, fall to the bishop of the diocese where the clerk is beneficed.

Where the bishop is patron of the benefice of the accused clerk, the archbishop acts in his stead, except that the bishop may send letters of request as in ordinary cases.

No clerk can be proceeded against for any offence committed more than two years before.

A somewhat similar Act respecting Ritual Offences was

passed in 1874, under the title of "The Public Worship Regulation Act, 1874." [37 and 38 Vict., ch. 85.][1]

This Act purports to provide for the hearing of "representations" of alleged illegal acts or omissions in any "Church" committed or omitted by the incumbent.

"Church," according to the Act, means any place of public worship in which the incumbent is by law, or by the bishop's license, required to conduct divine service according to the Book of Common Prayer.

"Incumbent" means the person in holy orders legally responsible for the due performance of divine service in any church.

"Parishioner" is "a male person of full age who, before making any representation under this Act, has transmitted to the bishop, under his hand, the declaration contained in schedule (A) to this Act, and who has, and for one year next before taking any proceedings under this Act has had, his usual place of abode in the parish within which the church is situate."

The delaration in schedule (A) is, that he is "a member of the Church of England as by law established."

"Parish" is defined as "any parish, ecclesiastical district, chapelry, or place over which any incumbent has the exclusive cure of souls.

There are also certain provisions as to churchyards and burial-grounds.

"Representations" may be made by the archdeacon of the archdeaconry, a churchwarden of the parish, or any three parishioners.

[1] Appendix VI.

All complaints have to be accompanied by a statutory declaration of their truth.

The grounds of complaint which may be made are these: "(1) That in such church any alteration in, or addition to, the fabric, ornaments, or furniture thereof has been made without lawful authority, or that any decoration forbidden by law has been introduced into such church; or (2) that the incumbent has within the preceding twelve months used, or permitted to be used, in such church or burial-ground any unlawful ornament of the minister of the church, or neglected to use any prescribed ornament or vesture; or (3) that the incumbent has within the preceding twelve months failed to observe, or to cause to be observed, the directions contained in the Book of Common Prayer relating to the performance, in such church or burial-ground, of the services, rites, and ceremonies ordered by the said book, or has made, or has permitted to be made, any unlawful addition to, alteration of, or omission from, such services, rites, and ceremonies."

There is a proviso that no proceedings shall be taken as to any alteration in, or addition to, the fabric completed five years before the proceedings.

The complaint is made to the bishop. If the bishop thinks it not a case for proceedings, he states his reasons in writing, and they are filed in the Registry. If he thinks it a case for proceedings, he must, within twenty-one days, send a copy of the complaint to the person complained of. Both parties have twenty-one days to say if they will submit to the bishop's decision. The bishop hears the matter as he thinks fit, and pronounces such judgment,

and issues such monition, as he thinks proper without appeal.

If the case is not submitted to the bishop, he sends it to the archbishop, and the archbishop requires the judge to hear it. The judge is appointed by the two archbishops, with the approval of the Crown; or if they fail to appoint, by the Crown itself.

Under the statute he was, as vacancies occurred, to take the place of the judges of the two Provincial Courts; and proceedings taken before him were then to be considered as taken in the proper Provincial Court. He has accordingly become statutable judge of the Arches Court of Canterbury and the Chancery Court of York.

The judge is to give not less than twenty-eight days' notice of the hearing. Before, however, he gives this notice, he is to have security for costs from the complainant.

The person complained of may, within twenty-one days of the notice, put in an answer. If he does not he will be deemed to deny the truth or relevancy of the complaint.

Evidence is to be given publicly on oath. The judge, if he condemns, issues a monition.

From his judgment an appeal goes to the Privy Council.

This monition has immediate operation, unless the judge think fit to suspend it, or the Privy Council issue an inhibition to him pending the appeal.

If a monition, either of the judge or of the bishop, is disobeyed, the incumbent may be inhibited, and have his benefice sequestrated for not more than three months, and further until he promise obedience. If the inhibition

remains in force for more than three years, or a second inhibition is issued upon the same monition within three years, the living is avoided.

The bishop or judge, as the case may be, determines whether his order has been disobeyed; but it is provided that "any proceedings to enforce obedience to such monition or order shall be taken by direction of the judge."

The Act has a proviso that faculties shall (if unopposed) be granted for any alteration or addition in or to any church (not unlawful) on payment of fees not exceeding two guineas.

In cathedral or collegiate churches any three inhabitants of the diocese may complain, and the visitor takes the place of the bishop in parish churches, with apparently the same transference of his power, when both parties do not submit to the judge.

In all cases where the bishop is patron of the benefice, or is unable to act through illness, the archbishop takes his place.

Where this is the case with an archbishop, the Crown is to appoint some other archbishop or bishop to take his place.

Rules and orders have been framed and published in an Order in Council of June 28, 1875, for further carrying out the provisions of the Act.

Book II.

THE MINISTRATIONS OF THE CHURCH.

Chapter I.

HOLY BAPTISM.

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THE rite of Baptism is regarded by the Church of England as a sacrament of which Christ ordained the outward sign, as a means for the bestowal of an inward grace. It "is not only a sign of profession, and mark of difference, whereby Christian men are discerned from others that be not christened, but it is also a sign of regeneration or new birth," and it is "generally necessary for salvation."

The principal subjects here to be dealt with respecting this initiatory sacrament of the Church are those connected with the persons qualified to receive and to administer it, the manner of administering it in public and in private, and the results of its administration.

§ 1. *Persons qualified to be baptized.*

The subjects of baptism are indicated by Our Lord's commission to the Apostles, by apostolic practice, and by the universal consent of the Catholic Church from the earliest ages to the present time. There is a generally inclusive force in the words of the first, "Go ye, therefore, and teach all nations, baptizing them" [Matt. xxviii. 19]; the purport of which is that those out of all nations who were to be made disciples (*μαθητεύσατε*) were to be enrolled among the number by the rite of baptism. The words are also illustrated by the beginning of Christ's discourse with Nicodemus. "Except a man[1] be born again . . . of water and of the spirit, he cannot see . . . he cannot enter into the kingdom of God" [John iii. 3, 5]: from which it is plain that the church or "kingdom of God" could only be entered through the gate of this rite. It may thus be concluded that all living persons[2] are, generally speaking, qualified to be the subjects of holy baptism: the particular conditions required of them being belief in Christ [Mark

Generally speaking, all living persons.

[1] "'Εὰν μή τις" is the expression used: but the word "man" in the translation was taken by the canonists to include both male and female. "Hæc enim dictio est indefinita, unde omnes comprehendit, et non solum masculum, sed etiam feminam comprehendit; nam et feminæ tenentur scire articulos fidei, sicut et masculi; et sic sub dictione generis masculini continentur et feminæ."—Lynd. *Prov.* i. 1.

[2] In the early ages of Christianity there existed a superstitious practice of baptizing the dead bodies of those who had not been baptized in their lifetime. It is forbidden by the sixth canon of the third Council of Carthage, and again by the eighteenth canon of the code of the African Church.

xvi. 16; Acts viii. 37; xviii. 31, 33] and repentance of sins [Luke xxiv. 47; Acts ii. 38; iii. 19].

Including infants.

But though belief and repentance were required of all adult candidates for baptism, it has been the continuous practice of the Church to baptize infants who are not capable of exercising faith through want of intelligence, and who have no need of repentance because they are not guilty of actual sin. This practice is founded on the belief that baptism is universally necessary for the remission of that inherited uncleanness of our nature which is called "original sin;" and that it is therefore necessary for infants as well as for adults. Our Lord's words, "Suffer the little children to come unto Me, and forbid them not: for of such is the kingdom of God" [Mark x. 14], that is, the Church, point clearly in this direction; it is extremely probable that there were infants among the "households" baptized by the Apostles [Acts xvi. 15, 33; 1 Cor. i. 16]; and the practice of infant baptism by the early church is recorded by Justin Martyr [*Apol.* i. 15], Tertullian [*De Bapt.* xviii.], and Origen [*In Luc., Hom.* xiv.]; though it became common to defer baptism through exaggerated notions as to the guilt of sin committed by the baptized.

In the English Church the use of infant baptism can be traced back to very early ages. One of the questions which St. Augustine asked of St. Gregory [A.D. 597] was as to the age at which a new-born infant should be baptized; the reply of St. Gregory being that it might be so, if there was necessity through danger of death, in the very hour of its birth. [Bede's *Eccl. Hist.* i. 27.] The laws of

King Ina [A.D. 690] enjoined that children should be baptized within thirty days after they were born, under a penalty of thirty shillings payable by the father [Hadd. and Stubbs, *Counc.* iii. 215]; a canon to the same effect being passed in the reign of King Edgar [A.D. 960]. In Archbishop Peckham's Constitutions [A.D. 1279] there is one which lays down a rule as to the baptism of children born in the week before Easter or Pentecost, and which adds: "but let children born at other times of the year be baptized according to the old custom, either directly they are born, or soon after at the discretion of the parents." [Wilk. *Conc.* ii. 33]. In two Acts of Parliament of the Reformation period giving general pardon to all heretics, etc., those are excepted who teach "that infants ought not to be baptized; and that if they are baptized, that they ought to be re-baptized when they come to lawful age." [32 Hen. VIII. ch. 49; 3 and 4 Edw. VI. ch. 24.] Lastly, in the Book of Common Prayer, the baptism of infants was provided for as it had been in the ancient service books; no form for baptizing others being inserted until A.D. 1662. The Rubric directs that "the curates of every parish shall often admonish the people, that they defer not the baptism of their children longer than the first or second Sunday next after their birth, or other holiday falling between, unless upon a great and reasonable cause, to be approved by the curate." The 27th Article of Religion says: "The baptism of young children is in any wise to be retained in the Church, as most agreeable with the institution of Christ:" the Catechism speaks of the baptism of "infants" of "tender age," as the regular

practice of the Church: and the 69th canon of 1603 orders the clergyman to be suspended for three months who refuses, or wilfully neglects, to baptize any infant in his parish who is in danger of death. [See also canon 68.]

It being thus the rule of the Church that all persons, infant or adult, are ordinarily to be baptized, there are three particulars in which this general rule is subject to limitation.

[1.] Infants are to be actually born before they are baptized. The question was much discussed among mediæval divines, whether it was right, in danger of death, to baptize a child *in utero*, rather than let it die unchristened.

The Council of Nismes [A.D. 1284] enjoined "Si vero, muliere in partu laborante, infans extra ventrem matris caput tantum emiserit, et in tanto periculo infans positus nasci nequiverit, infundat aliqua de obstetricibus aquam super caput infantis, dicens; *Ego baptizo te*, &c." [Martene, *Anecdot.* iv.] Several other such canons exist, but none of English origin. Lyndwood, however, in his gloss upon the constitutions of Archbishop Peckham, lays down the same rule [Lyndw. *Prov.* iii. 25]; and it is found also in the 'Rituale Romanum' of modern use, with the addition, in both, of the injunction that if the infant should survive it is not to be again baptized. It is obvious that, in a rite so performed, the child could not be named, and so the person baptizing was directed, in some of these rules, to say "Infans," or "Creatura Dei, ego te baptizo." But the Book of Common Prayer, which provides a service for the private baptism of dying infants, especially

provides for naming them, "The child being named by some one that is present, the minister shall pour water upon it, saying these words, '*N.*, I baptize thee, &c.'" Thus, doubtless, it is to be considered that the Church of England applies the words of St. Augustine in their fullest sense of being born to separate individual existence. "As that which has never lived cannot die, so that which has never been born at all cannot be born again." [Aug. *De Bapt. pueror.*, li. 2.]

[2.] Children are not to be baptized in their infancy if their parents are themselves unchristianed. It has been the constant rule of the Church, although it has not been fixed by any synodal decision, not to baptize the children of Jews or heathens, unless circumstances had placed them under the tutelage of a Christian, who had thus become *in loco parentis* to them [Aug. *De Grat. et Lib. Arb.* xxii.]; and many charitable persons took charge of foundlings exposed by heathen parents, or bought the children taken captive in war, that they might have them baptized, and bring them up as Christians. [Ambros. *De Vocat. Gent.* ii. 8.] In such cases they were offered in the name of all the faithful. [Aug. *Ep.* xcviii. *ad Bonifac.*] But if one parent were a Christian it was decided that the infant might be baptized, though the other were a Jew or a heathen, the point being synodically determined by the sixty-third canon of the Fourth Council of Toledo.[1]

Infants not to be baptized "invitis parentibus."

The very young children of parents unwilling (although

[1] This question is one that is likely to arise very frequently among missionary clergy.

themselves Christian) to allow them to be baptized, are practically on a similar footing, for to baptize them against the will of the parents would be to interfere with the authority which has been assigned to parents by nature and by revelation over children who are too young to judge and act for themselves. If, however, one parent should consent, there would be little room for hesitation; and none at all if the consenting parent be the father. But although a baptism administered *invitis parentibus* would be contrary to the practice of the Church, and partaking in some degree of the nature of a fraud upon the parent, it would yet be valid if administered with proper matter and form.[1] A clergyman is bound, if required, to baptize the child of any Christian parishioner, and therefore of a dissenter. [Burn, *Eccl. Law*, vol. i. p. 115*a*.]

[3.] Persons of unsound mind are not to be necessarily excluded from baptism. It was decreed by the 37th canon of the Council of Elvira [A.D. 305] that the Energumens, or those supposed to be possessed with evil spirits, were to be baptized when they were in danger of death; and this became the well-known rule of the early church. The 13th

Idiots and lunatics not excluded from baptism.

[1] The baptism of children who are neither infants nor adults is provided for by the rubric—"If any persons not baptized in their infancy shall be brought to be baptized before they come to years of discretion to answer for themselves, it may suffice to use the Office for Public Baptism of Infants, or (in case of extreme danger) the Office for Private Baptism, only changing the word [infant] for [child or person] as occasion requireth." Lyndwood defines "puer" as "qui est major septennio, sed minor quatuordecim annis;" and "adultus" as one who is "major quatuordecim annis."

canon of the Council of Orange [A.D. 441] also decided that all the holy offices are to be administered to idiots ["amentibus"], and this canon was incorporated into English canon law, as the 83rd of the Excerpts of Archbishop Egbert [A.D. 750]. The rule has been that they should be baptized in the faith of the Church as if they were infants.

As regards lunatics the custom is to baptize them if they are in danger of death, on the principle laid down in the Elviran canon above named; or if they had, previously to their insanity, requested that they might receive baptism. A similar rule is also laid down respecting dumb persons, or those incapacitated by sickness to answer for themselves, by the 12th canon of the Council of Orange, and the 34th canon of the Third Council of Carthage.[1]

§ 2. *Persons qualified to administer Baptism.*

There can be no doubt that in the first instance our Blessed Lord gave to his apostles a commission to "baptize all nations," and that such a commission was to be handed on to those who were to take up their work after their deaths, those whom they ordained for that purpose according to the words of their Master, "As My Father hath sent me, so send I you." Very early in the history of the Apostolic Church also, we find a deacon, Philip, baptizing at Samaria, and the apostles, St. Peter and St. John, ratifying his act by confirming those whom

[1] St. Cyprian deals with this subject at some length in one of his Epistles. [Cyp. *Ep.* lxxvi. *al.* lxix. *ad Magnum.*]

he had baptized. From this it may be concluded that as the bishops are the one principal channel through which ministerial authority is conveyed from our Lord—the Fountain of all such authority—to others, so they undoubtedly commissioned inferior ministers to baptize in the very beginning of the Christian Church.

But the question soon arose whether the nature of holy baptism was not such as to make a bishop, priest, or deacon absolutely essential to its right administration; and upon this subject three theories have been held. (1) The first and strictest of these was that maintained by St. Cyprian, who esteemed that baptism only to be true and effective which is administered by those who have been ordained by orthodox bishops, and are in communion with the Church. (2) The second theory was much more generally held in the early church, *viz.*, that even schismatics and heretics could give true baptism, *provided they were in holy orders.* (3) A third, and this was that held by St. Augustine, made the essence of the sacrament to consist in the application of the water with the proper words of invocation by whomsoever this was done. The Council of Arles [A.D. 314] decided by their eighth canon against the first theory, and in favour of the second; a decision practically confirmed by the nineteenth canon of the Council of Nicæa, which directed the re-baptism of those only who had been baptized by the followers of Paul of Samosata, and so not in the name of the Blessed Trinity. No further decision on the subject was ever given by a general council, and thus the question still remained open whether those who were not in holy orders could, by the proper use of

water and the proper invocation, administer a true baptism. In ancient times this question was not one of very extensive bearing, as none but the clergy ever baptized, except in cases where there was danger of death, and no clergyman could be found. But in modern times it has become a matter of primary importance, as a portion of the people of England, and the majority of those born in Protestant countries, are baptized by persons who have never been ordained by bishops, and are not therefore either priests or deacons in the sense of the Church of England, of the Churches of the Roman Communion, or of the Eastern Church.

The validity of such lay baptism was maintained by Tertullian [*De Bapt.* xvii.], who, however, adds that a woman is as much forbidden to baptize as to teach in the Church. It was allowed by the Patriarch of Alexandria in the case of some boys baptized by Athanasius when he himself was a boy. [Rufin. i. 14.] St. Augustine maintained it to be valid, not only in cases of necessity, but under other circumstances also. [Aug. *De Bapt.* vii. 102, *cont. Parmen.* ii. 13.] St. Jerome also allowed it in case of necessity; and the Council of Elvira [A.D. 305] decided in its thirty-eighth canon that no re-baptism was necessary for those who had been baptized in an emergency by laymen, but only that the persons so baptized should be brought to the bishop for confirmation, if they should survive. Without citing any further authorities, it may be sufficient to give the emphatic words of Hooker—"Yea, 'baptism by any man in case of necessity,' was the voice of the whole world heretofore." [*Ecc. Polit.* V. lxi. 3.]

He also affirms, in his subsequent argument, that even baptism by women, in case of extreme necessity, was valid, and not to be reiterated.

The principle thus laid down has been definitely stated from time to time by English synods from a very early age;[1] and the "Pupilla Oculi," which was a standard book of instructions for the clergy in the mediæval period, has some exhaustive statements on the subject [ii. 2], which plainly show that it was the practice to recognize baptism as valid, by whomsoever administered, if given with the proper matter and form of words; which practice undoubtedly continued up to the time of the Reformation. This is at the same time shown most clearly and authoritatively by the rubric placed at the end of the Ritus Baptizandi in the Salisbury Manual, which is as follows:—"Notandum est quod quilibet sacerdos parochialis debet parochianis suis formam baptizandi in aqua pura, naturali, et recenti, et non in alio liquore, frequenter in diebus dominicis exponere, ut si necessitas emergat sciant parvulos in forma ecclesiæ baptizare, proferendo formam verborum baptismi in lingua materna, distincte et aperte et solum unica voce, nullo modo iterando verba illa rite semel prolata, vel similia super eundem: sed sine aliqua additione, subtractione, interruptione, verbi pro verbo positione, mutatione, corruptione, seu transpositione, sic dicendo: I christene thee N. in the name of the Fadir, and of the Sone, and of the Holy Gost. Amen. Vel in lingua latina, sic: Ego baptizo te, N. in nomine Patris, et Filii, et Spiritus Sancti.

[1] Several will be found in Gibson's *Codex*, xviii. 8.

Amen. Aquam super parvulum spargendo, vel in aquam mergendo ter vel saltem semel."[1]

The substantial part of the above rubric was retained in the Book of Common Prayer in the following words:—

"¶ The Pastors and Curates shall oft admonish the people that they defer not And also they shall warn them that without great cause and necessity they baptize not children at home in their houses. And when great need shall compel them so to do, that then they minister it on this fashion. ¶ First, let them that be present call upon God for His grace, and say the Lord's Prayer, if the time will suffer. And then one of them shall name the child, and dip him in the water, or pour water upon him, saying these words: ¶ N. I baptize thee in the name of the Father, and of the Son, and of the

[1] Another rubric added this caution: "¶ Non licet laico vel mulieri aliquem baptizare, nisi in articulo necessitatis. Si vero vir et mulier adessent ubi immineret necessitatis articulus baptizandi puerum, et non esset alius minister ad hoc magis idoneus præsens, vir baptizet et non mulier, nisi forte mulier bene sciret verba sacramentalia et non vir, vel aliud impedimentum subesset." But midwives used sometimes to baptize in case of necessity [Burn's *Eccl. Law*, art. Midwives, vol. iii. p. 513] down to quite recent times. It may also be added that surgeons frequently baptize children in danger of death at the present day. [Blunt's *Directorium Pastorale*, p. 156.] In 1584 the Puritans presented a memorial to Archbishop Whitgift, praying, amongst other things, "that all baptizing by midwives and women may from henceforth be inhibited and declared void." The archbishop replied that the baptism of even women is lawful and good, "so that the institution of Christ touching the word and element is duly used;" and he adds that no learned man ever doubted that such was the case, though some of late by their singularity in some points of religion had given the adversary greater advantage than anything else could do.

Holy Ghost. Amen. And let them not doubt but that the child so baptized is lawfully and sufficiently baptized" After the Hampton Court Conference, in 1603, the above rubric was altered to meet the prejudices of the Puritans, the words "lawful minister" taking the place of "one of them." In 1661, this was further altered to "the minister of the parish," and at Bishop Cosin's suggestion was added, "(or in his absence, any other lawful minister that can be procured)":[1] and these successive alterations have been supposed to narrow the theory of the Church of England respecting baptism, and to restrict its valid administration to bishops, priests, and deacons. But, although these additions and alterations were probably made with the object of checking lay baptisms, it cannot be said that they contain any decision against their validity; nor indeed can it be supposed for a moment that the prudent men who superintended the various revisions of the Prayer Book would have reversed, merely by a rubric, the long-established tenet of the Church of England, that lay baptisms are in some cases necessary, and not to be repeated. Moreover, in the questions to be asked by the clergyman of those who bring a privately-baptized child to the church to be received, it is expressly stated that the "things essential to this sacrament" are

[1] It must not be forgotten that "*minister*" in the Book of Common Prayer means "*executor officii*," and that if it was used here in that sense, the addition of "lawful" does not by any means of necessity restrict it to a clergyman. The "*alius minister ad hoc magis idoneus*" of the rubric given in the preceding note, shows that the word "minister" was used even of a lay person in the case of the ministration of baptism long before the Reformation.

the "matter" and the "words," no notice being given that the person who performed the ceremony was one of these "things essential" more than those who were present. Lastly, although there were supposed to be about three hundred thousand persons in England who had been baptized by laymen,[1] at the time when the clergy were restored to their duties in 1661, no public provision was made by the Church for re-baptizing them, nor does it appear that any doubt whatever was thrown upon the validity of their baptism by those who revised our offices.

The question of lay baptism has been three times argued in the present century. The first time was in the case of Kemp *v.* Wickes [3 Phill. 264], in the year 1809, the second in that of Mastin *v.* Escott [2 Curt. 692], in the year 1841. Both these cases were decided by the Arches Court in favour of lay baptism, and the decision in the second was confirmed by the Queen in Council on appeal in the year 1842. [Escott *v.* Mastin, 4 Moore, P. C. p. 104.] In the case of Mastin *v.* Escott, Sir H. Jenner said, "It seems to me, upon the whole of the case, that the law of the Church is beyond all doubt, that a child baptized by a layman is validly baptized." The judgment of the Privy Council, delivered by Lord Brougham, was to the same effect.

Lay baptism being thus allowed to be valid in case of necessity, it is yet clear that its validity depends upon the manner of its administration, not upon the reality of the necessity; and hence even if there is no such necessity, it must still be accounted valid, provided the proper matter

[1] Bishop Fleetwood's Works, p. 530.

and form are used. Hence baptism by dissenting ministers who have not received priests' or deacons' orders at the hands of a bishop are valid lay baptisms, if administered with water and the valid form of words. There is room, however, for some uncertainty as to the fact of a dissenting baptism being thus valid; for many dissenters attaching little importance to baptism, it is reasonably to be supposed that they would be sometimes indifferent about exactness in administering it. For cases of doubt the hypothetical form, "If thou art not already baptized," &c., is provided; and by its use an unconscious iteration of baptism is avoided, while at the same time the certainty of its administration is secured.

It is hardly necessary to add that lay baptism should be resorted to only in great extremity; and that when the sacrament is administered by one who is not ordained without such necessity, the person baptizing is guilty of no small sin, even though his act may bring a blessing to the person baptized. His act cannot be undone; but it ought not to have been done.

§ 3. *Manner of administering Baptism.*

The original mode in which this sacrament was administered was undoubtedly by the descent of the person to be baptized into a stream or pool of water. It is probable that the person baptizing also stood in the water [Acts viii. 38], and poured some of it with his hand upon the head of the other, as the latter bowed himself three times (at the naming of each person of the Trinity by the baptizer) into the stream.

Baptism by immersion.

St. Paul gave a beautiful symbolical meaning to this practice of immersion, when he said, "We are buried with Him by baptism into death; that like as Christ was raised up from the dead by the glory of the Father, even so we also should walk in newness of life." [Rom. vi. 4.] When fonts were made in churches, they were made with a descent of seven steps, symbolizing the sevenfold gift bestowed by the Holy Ghost [Isidore, *De Ecc. Off.* ii. 24]; and this implies a considerable depth of water, reaching to about the waist of an ordinary-sized man.

Trine immersion.

The practice of *trine* immersion also appears to be of primitive origin. It is mentioned by Tertullian, and other early fathers, in passages already quoted; and also by St. Ambrose in his Treatise on the Sacraments; St. Basil, in his work on the Holy Spirit; and St. Leo, in his fourth Epistle; and all give substantially the same account of the practice with that given by St. Ambrose—"Thou wast asked, Dost thou believe in God the Father Almighty? Thou didst answer, I believe, and didst dip into the water; that is, thou wast buried. Again wast thou asked, Dost thou believe in Jesus Christ our Lord, and in His cross? Thou didst answer, I believe, and didst dip into the water, therefore also thou wast buried with Christ; for whosoever is buried with Christ, shall rise again with Christ. A third time wast thou asked, Dost thou believe in the Holy Ghost? Thou didst reply, I believe; and a third time didst thou dip into the water." The apostolical constitutions of the fifth century even forbade the practice of single immersion, decreeing in their fiftieth canon, "If any bishop or priest does not perform

the one initiation with three immersions, but with giving one immersion only into the death of our Lord, let him be deposed. For the Lord said not, Baptize into My death; but, 'Go—baptizing them in the name of the Father, and of the Son, and of the Holy Ghost.'" There is also extant an Irish canon [Cashel, A.D. 1172] distinctly ordering trine immersion. [Wilk. *Conc.* i. 472.] Yet there seems to have been an early necessity for guarding against error in the use of this trine immersion, and St. Gregory of Nyssa writes: "We immerse to the Father, that we may be sanctified; we immerse to the Son, also to this same end; we immerse also to the Holy Ghost, that we may be that which He is and is called. There is no difference in the sanctification."

The practice of immersion, whether trine or single, was not, however, regarded as an essential feature of baptism. The Philippian gaoler "was baptized, he and all his, straightway," in prison, and in the middle of the night; and immersion in such a case seems extremely improbable. It seems almost equally unlikely in the case of Cornelius and his household. In days of persecution, when Christian rites could only be administered in secret, immersion could not have been universal: and there is abundant evidence that "clinic baptism"—that is, the baptism of those who were on their death-beds—was very common in those primitive days. Respecting the usage in the latter case, St. Cyprian wrote to Magnus [A.D. 255] in the following words: "You have inquired also, dearest son, what I think of those who in sickness and debility obtain the grace of God, whether they are

Baptism by affusion.

to be accounted legitimate Christians, in that they are sprinkled, not washed, with the saving water. . . I, as far as my poor ability conceiveth, account that the Divine blessings can in no respect be mutilated and weakened, nor any less gift be imparted, where what is drawn from the Divine bounty is accepted with the full and entire faith both of the giver and the receiver. Nor should it disturb any one that the sick seem only to be sprinkled or affused with water, when they attain the grace of the Lord, since Holy Scripture speaks by the Prophet Ezekiel, and says, 'Then will I sprinkle clean water upon you, and ye shall be cleansed from all your filthiness, and from all your idols will I cleanse you; a new heart will I give you, and a new spirit will I put within you.'" He then goes on to refer also to Numbers xix. 7, 19, 20; viii. 5–7; xix. 9; and adds, "Whence it is apparent that the sprinkling also of water has like force with the saving washing, and that when this is done in the Church"—not, *i.e.* by heretics—"where the faith both of the giver and receiver is entire, all holds good, and is consummated and perfected by the power of the Lord and the truth of faith." [Cyp., *Ep.* lxix. 11, 12.] The principle thus so plainly set forth by St. Cyprian has ever since been generally accepted by the Church; and ablution, or the *actual touch of water during the invocation of the Blessed Trinity*, has always been accounted the essential feature in the administration of holy baptism. Whether that ablution is effected by the more complete method of immersion, or by the less perfect one of affusion, the result is the same: care being always taken that the *actual contact*

of the water with the person is really effected. And thus the rubric of the English office leaves it discretionary whether the infants or adults to be baptized shall be dipped in the water, or have water *poured upon them;* security being provided for the actual contact of the water by the exclusion of mere *sprinkling,* which is not recognised at all in the Church of England, and can never be considered a safe method of applying the water, or a reverent way of obeying the command of our Blessed Lord, however much it may, as a *minimum* of obedience, fulfil the required conditions.

Baptism by immersion is still, there can be no doubt, the primary rule of the Church of England: and when it is demanded by parents for their children, or by adult candidates for themselves, it can scarcely be refused, though the practical difficulties in the way of complying with the demand are, in either case, considerable. In the case of infants the old rubric [A.D. 1548] was: "Then the priest shall take the child in his hands, and ask the name; and naming the child, shall dip it in the water thrice: first, dipping the right side; secondly, the left side; the third time dipping the face toward the font." In the case of adults the rubric is of a later date [A.D. 1662], and directs: "Then shall the priest take each person to be baptized by the right hand and then shall dip him in the water, or pour water upon him."

§ 4. *Public Baptism.*

It is, and always has been, provided by the Church, that the ordinary administration of baptism shall take

place *in facie ecclesiæ*, the exceptions being royal children, and those who from sickness or other danger cannot be brought to church.[1]

Its ordinary place of administration is, therefore, at a font in the building set apart, by consecration or licence, for Divine Service. Thus the 81st canon of 1603 directs as follows: "According to a former Constitution, too much neglected in many places, we appoint that there shall be a font of stone in every church and chapel where baptism is to be ministered; the same to be set in the ancient usual places; in which only font the minister shall baptize publicly."

The "former Constitution" referred to here is the tenth of those passed under Edmund Rich, Archbishop of Canterbury, in the year 1236. "Let every baptismal church have a font of stone, or of some other proper material, sufficient in size, decently covered, reverently kept, and used for no other purpose." [Wilk. *Conc.* i. 636.]

The ordinary time for the administration of baptism is that during which a congregation is assembled for Divine Service. In the early Church, Epiphany, Easter, and Whitsuntide were the chief seasons for baptism; and the

[1] In the revision of 1552 the word "public" was expunged from the title of the service, but it was carefully restored in the revision of 1661. One of the rubrics at the end of the ancient Office for Baptism in the Church of England is as follows: "¶ Non licet aliquem baptizare in aula, camera, vel aliquo loco privato, sed duntaxat in ecclesiis in quibus sunt fontes ad hoc specialiter ordinati, nisi fuerit filius regis vel principis, aut talis necessitas emerserit propter quam ad ecclesiam accessus absque periculo haberi non potest."

two latter are called "the times appointed by the sacred canons" in the constitutions of Otho and Othobon, in the thirteenth century. But as those constitutions permitted baptism to be administered at other seasons, so one of Archbishop Peckham's [A.D. 1281] still further relaxed the ancient rule, and directed that while the baptism of children born within eight days before Easter and Whitsuntide should be reserved for those festivals, others should be baptized as soon as convenient after birth. The ancient custom of the Church was noticed in a paragraph of the rubric, from 1549 to 1661, as follows:

"It appeareth by ancient writers, that the sacrament of baptism in the old time was not commonly ministered but at two times in the year, at Easter and Whitsuntide; at which times it was openly ministered in the presence of all the congregation: which custom (now being grown out of use), although it cannot for many considerations be well restored again, yet it is thought good to follow the same as near as conveniently may be." This paragraph was, however, dropped at the revision of the Prayer Book in 1661, and the rubric left thus: "The people are to be admonished, that it is most convenient that baptism should not be administered but upon Sundays, and other holy-days, when the most number of people come together; as well for that the congregation there present may testify the receiving of them that be newly baptized into the number of Christ's Church; as also because in the baptism of infants every man present may be put in remembrance of his own profession made to God in his baptism. For which cause also it is expedient that baptism be minis-

tered in the vulgar tongue. Nevertheless (if necessity so require), children may be baptized upon any other day."

A further rubric enjoins that the baptism of infants shall take place within a fortnight of birth: "The curates of every parish shall often admonish the people, that they defer not the baptism of their children longer than the first or second Sunday next after their birth, or other holy day falling between, unless upon a great and reasonable cause to be approved by the curate."

Modern custom has extended the limit to a month, and perhaps there is good reason for this in the diminished hardiness that accompanies advanced civilization; yet the time is exactly that named in the second of King Ina's Ecclesiastical Laws at the end of the seventh century.[1]

The parents of any child that is to be baptized are

[1] The parish register of Houghton-le-Spring, near Durham, contains entries of the date of birth, as well as that of baptism, for several years during the supremacy of the Puritans. The following list shows the ages at which 150 infants were baptized in that parish, between October 3rd, 1653, and March 13th, 1658–9:

Number baptized.	Days old.	Number baptized.	Days old.
11	1	13	8
30	2	1	9
20	3	2	11
24	4	1	12
13	5	1	15
15	6	1	16
18	7		

It thus appears that 144 out of 150 were baptized within eight days of birth, and that only two of the remaining six were delayed beyond the second week.

required by the rubric to give notice to the responsible clergyman: "When there are children to be baptized, the parents shall give knowledge thereof overnight, or in the morning, before the beginning of morning prayer, to the curate;" the preceding regulation as to the administration of baptism on Sundays or holy-days only being, of course, understood. Such notice having been given, a severe penalty is enacted by the 68th canon, on any clergyman who refuses to act upon it: "No minister shall refuse or delay to christen any child according to the form of the Book of Common Prayer that is brought to the church to him upon Sundays or holy days, to be christened convenient warning being given him thereof before, in such manner and form as is prescribed in the said Book of Common Prayer. And if he shall refuse to christen the" child "he shall be suspended by the bishop of the diocese from his ministry by the space of three months."

In interpreting this canon, due regard must be paid to the expression, "according to the form of the Book of Common Prayer;" since this "form" limits the time of baptism to "after the last lesson" at morning or evening prayer, and the clergyman would not be bound to baptize a child brought to the church at a later time of the service, or when there is neither mattins nor evensong, or perhaps when no godfathers or godmothers appear. "Convenient warning" has also been defined as being "warning of the intention to bring," and reasonably means at least the evening before, as in the rubric.

Before the public baptism of adults can take place, a

longer notice is required; the rubric ordering that "When any such persons as are of riper years are to be baptized, timely notice shall be given to the bishop, or whom he shall appoint for that purpose, a week before at the least, by the parents, or some other discreet persons; that so due care may be taken for their examination, whether they be sufficiently instructed in the principles of the Christian religion; and that they may be exhorted to prepare themselves with prayers and fasting for the receiving of this holy sacrament."

This provision as to a week's notice to the bishop being supplemented by the words "or whom he shall appoint for that purpose," a general discretion has sometimes been given by a bishop to a clergyman in whose parish adult baptisms were likely to be frequent; and certainly no one seems more fit to be appointed "for that purpose" than the parish priest himself. But it is also ordered in the rubric that the baptism of adults shall be followed as soon as possible by their confirmation: "It is expedient that every person thus baptized should be confirmed by the bishop so soon after his baptism as conveniently may be; that so he may be admitted to the holy communion." There may be an association between this and the preceding rubric.

Godfathers and godmothers are required, by the law of the Church of England, at the public baptism both of infants and adults. The rubric preceding the Office for the Public Baptism of Infants enjoins: "And note, that there shall be for every male-child to be baptized, two godfathers and one godmother; and for every female, one

godfather and two godmothers." They are also spoken of in the second rubric of the Office for the Baptism of Adults, are required to name the adult to be baptized, and are exhorted in the words: "Ye must remember, that it is your part and duty to put *them* in mind what a solemn vow, promise, and profession *they have* now made before this congregation, and especially before you *their* chosen witnesses. And ye are also to call upon *them* to use all diligence to be rightly instructed in God's holy Word; that so *they* may grow in grace, and in the knowledge of our Lord Jesus Christ, and live godly, righteously, and soberly in this present world."

In the rubric of the ancient baptismal office of the Church of England the number of sponsors is left indefinite, though it is ordered not to exceed three. "Non plures quam unus vir et una mulier debent accedere ad suscipiendum parvulum de sacro fonte: unde plures ad hoc simul accedentes peccant faciendo contra prohibitionem canonis, nisi alia fuerit consuetudo approbata: tamen ultra tres amplius ad hoc nullatenus recipiantur."

In a national council, held at York by Hubert, Archbishop of Canterbury, in 1195, and in that of Canterbury in 1237, there is, however, a provision exactly similar to that in our present rubric: "Ad levandum vero puerum de fonte, tres ad plus recipiantur; videlicet in baptismo maris duo mares et una fœmina; in baptismo fœminæ, duæ fœminæ, et unus masculus; quod enim amplius est a malo est." [Wilk. *Conc.* i. 501, 647.] The primitive practice of the Church appears to have been identical with that of the Eastern and the Latin Church at present, in

which only one sponsor is required, although two are permitted. [*Duty of Parish Priests*, iii. 10; *Conc. Trident* xxiv. 2.] In the ancient English exhortation, printed at the end of this office, it will be seen that one godfather and one godmother are named; and it may be doubted whether three sponsors were ever actually required until 1661, when the present rubric was inserted by Bishop Cosin.

By the ancient canon law there were several restrictions as to the persons who should be allowed to offer themselves as sponsors; but the only ones now retained are those of the 29th canon of 1603, which forbids parents to do so for their own children, and excludes non-communicants from the office: "No parent shall be urged to be present, nor be admitted to answer as godfather for his own child; nor any godfather or godmother shall be suffered to make any other answer or speech, than by the Book of Common Prayer is prescribed in that behalf: neither shall any person be admitted godfather or godmother to any child at christening, ... before the said person so undertaking hath received the holy communion."[1]

All that it is necessary further to mention respecting the law of baptism is, that a constitution of A.D. 1281 places

[1] In 1865 the Convocation of Canterbury (under Royal Licence) altered this canon to the following form:—"No godfather or godmother shall be suffered to make any other answer or speech than by the Book of Common Prayer is prescribed in that behalf; neither shall any person be admitted godfather or godmother to any child at christening or confirmation before the said person so undertaking hath received the holy communion." But this alteration was not assented to by that of York, and was never promulgated by the Crown.

a rational and proper limitation upon the names that may be given at baptism. It runs, "Let priests also take care that they do not permit wanton names, which tend to lasciviousness, to be given to children, especially female children, in baptism.[1] If this be done, let the name be changed by the bishops at confirmation." [Wilk. *Conc.* ii. 33.] This was anciently done by the bishop naming the child he was confirming by the new and not the old name, in the usual words of the confirmation office, "Consigno te *N.* signo crucis ✠ et confirmo te chrismate salutis, &c." If a bishop were to act in an analogous manner at the present day it is presumed he would insert the name thus, in the invocation, "Defend, O Lord, this Thy child *N.* with Thy heavenly grace," &c.

Bishop Kennett has left on record in some MS. notes to the Prayer Book, which are now in the British Museum, an account of a case in which a bishop changed the name of a child. He states the fact as follows:—"On Sunday, Dec. 21, 1707, the Lord Bishop of Lincoln confirmed a young lad in Henry VII.'s Chapel: who upon that ceremony was to change his Christian name: and, accordingly, the sponsor who presented him delivered to the bishop a certificate, which his lordship signed, to notify that he had confirmed such a person by such a name, and

[1] There is, in the British Museum Library, a letter of Bishop Scambler of Peterborough, written in 1567, which contains the following words on this subject:—"I may not change usuall or comen names at the confirmacion, but onlie strange and not comen; and further, if the name be changed at confirmacion, it taketh effect but from the confirmacion."—Lansd. MS. 50, *fol.* 127.

did order the parish minister then present to register the person in the parish book under that name. This was done by the opinion under hand of Sir Edward Northey, and the like opinion of Lord Chief Justice Holt, founded on the authority of Sir Edward Coke, who says it was the common law of England." But a much later instance is on record as having taken place in Ireland, the register book of Cork Cathedral containing the following entry:— "1761, Sept. 21st. Robert St. George Caulfield, Lieutenant in His Majesties 93 regiment of foot, commanded by Col. Samuel Bagshaw, and eldest son of Robert Caulfield, minister of, and residing in the parish of Finglass, near Dublin, was by me presented to the Rt. Revd. Father in God, Jemmett, Lord Bishop of Corke and Ross, in the Cathedral and Parish Church of St. Finbarry, Corke, to be admitted to the holy rite of Confirmation, and to be admitted to change his name of Robert St. George to that of William, and by the name of William I did then present him; and the bishop, consenting to the changing of his name to William, did then confirm him William." [*Notes and Queries*, 4th Ser. vi. p. 17.] It is believed that cases still occur in which this is done. The ancient *canon* law certainly only referred to such a change when the baptismal name was one of an improper kind, yet this may only represent a portion of the *common* law of the Church on the subject.

§ 5. *Private Baptism.*

It seems to have been rare for the clergy to baptize out of church in mediæval times, and the canons which deal

with the subject of private baptism are, in reality, canons respecting lay baptism; merely enjoining that the clergy shall frequently teach their people the proper form of baptism, and that lay baptism properly administered is valid. For more than half a century after the publication of the Prayer Book, a similar practice seems to have continued, the only provision made for private baptism being as follows: "First, let them that be present call upon God for His grace, and say the Lord's Prayer, if the time will suffer. And then one of them shall name the child, and dip him in the water, or pour water upon him, saying these words: '*N.*, I baptize thee in the name of the Father, and of the Son, and of the Holy Ghost.'" The disputes about the efficacy of lay baptism led, however, to the passing of the 69th canon of 1603, enforcing the duty of private baptism on the clergy themselves, when there was any necessity for it at all. "If any minister, being duly, without any manner of collusion, informed of the weakness and danger of death of any infant unbaptized in his parish, and thereupon desired to go or come to the place where the said infant remaineth, to baptize the same, shall either wilfully refuse so to do, or of purpose, or of gross negligence, shall so defer the time, as, when he might conveniently have resorted to the place, and have baptized the said infant, it dieth, through such his default, unbaptized; the said minister shall be suspended for three months; and before his restitution shall acknowledge his fault, and promise before his ordinary, that he will not wittingly incur the like again. Provided, that where there is a curate, or a substitute, this Constitu-

tion shall not extend to the parson or vicar himself, but to the curate or substitute present."[1]

At the revision of the Prayer Book in 1661, the old second rubric, "They shall warn them, that without great cause and necessity they baptize not children at home in their houses," was altered into "they *procure not* their children *to be baptized* at home in their houses." The third (given above) was also altered into this form: "First, let the minister of the parish (or in his absence, any other lawful minister that can be procured) with them that are present call upon God, and say the Lord's Prayer, and so many of the collects appointed to be said before in the form of public baptism, as the time and present exigence will suffer. And then, the child being named by some one that is present, the minister shall pour water upon it, saying these words" The connection between these changes and the question of lay baptism is dealt with in a preceding section [page 46]. It is only necessary here to add that while private baptism was in mediæval times, and down to the changes made in the office in 1661, looked upon as primarily a *lay* function, since those changes it is exhibited as primarily a clerical function. Under both systems it was provided that the child privately baptized should, if convalescent, be brought to church, not to be baptized again, but for a solemn public recognition to be made of the child's regenerated condi-

[1] The laity so much objected to public baptism that this canon introduced a very general substitution of private baptism by the clergy for the public rite, a practice which came down even to the last generation.

tion by the priest publicly receiving it, as one already a Christian child, into the public congregation of Christ's flock; the rites previously omitted being also then supplied.

A Constitution of A.D. 1236 decrees that "if, on account of necessity, a child has been baptized by a layman at home, the water used shall (for the sake of reverence towards baptism) be either poured upon the fire, or else carried to the church to be poured into the font; and the vessel used shall either be destroyed by fire" [wooden bowls being then common] "or applied to the use of the church."

§ 6. *Law as to Fees for Baptism.*

There has often been an inclination on the part of the laity to give, and of the clergy to receive, fees for the administration of baptism; but there are distinct laws of the Church forbidding the practice. In such early times as the year 305 the 48th canon of the Council of Elvira decreed that "those who are baptized shall not (as the custom has been) cast money into the font" [in concham] "lest the priest should seem to dispense for a fee what he has received gratis." The Excerpts of Egbert [A.D. 750] order "that no priest shall presume to sell . . . the sacrament of baptism . . . for money." [Wilk. *Conc.* i. 102.] The same was ordained in a national council held at London in the year 1126 [*Ibid.* i. 408]; as well as in provincial councils at Westminster, in the year 1173 [*Ibid.* i. 474]; and at Oxford in the year 1222. [*Ibid.* i. 594.]

Doubts having been entertained in recent times whether

fees might not, by custom or under local statutes, be demanded for Baptism or Registration in some Churches and Chapels, an Act [35 and 36 Vict. ch. 36] was passed in 1872 which enacts that "it shall not be lawful for the minister, clerk in orders, parish clerk, vestry clerk, warden, or any other person, to demand any fee or reward for the celebration of the sacrament of baptism, or for the registry thereof." Vested rights conferred by Act of Parliament (if there are any such) are, however, reserved to the present holders.

§ 7. *Registration of Baptisms.*

The registration of baptisms is a custom which is probably not to be traced higher than the fifteenth century, though that of deaths, and perhaps of burials, is of a much more ancient date. The form in which the entries were formerly made varied much, according to the taste and the eccentricities of the clergyman or the parish-clerk; and it is probable that the registers were often irregularly kept, notwithstanding the strict regulations contained in the seventieth canon of 1603. In the year 1812 an Act of Parliament was passed "for the better regulating and preserving Parish and other Registers of Births, Baptisms, Marriages, and Burials in England" [52 Geo. III. ch. 146]; and this is the law by which the registration of baptisms is now ruled. It enacts that a separate register book for baptisms is to be provided, in the form directed by the Act, at the expense of the parish, to be kept in the custody of the officiating minister in an iron chest, which is also to be provided at the expense of the parish.

Entries of all public and private baptisms are to be made by the rector, vicar, curate, or officiating minister, in the form directed by the Act. Of these entries a copy written on parchment, certified in a particular form by the clergyman, whose signature shall be attested by one of the churchwardens, is to be transmitted annually to the registrar of the diocese by the churchwardens, at some time between March 1st and June 1st. In extra-parochial places, where there is no church or chapel, a memorandum of any baptism signed by the parent of the child baptized is to be given by the officiating minister, within one month afterwards, to the rector, vicar, or curate of the next parish, to be entered into the register of that parish, and form part of it.

False entries of baptisms are punishable as felony by transportation for fourteen years. [§ 14.] But errors may be corrected by the clergyman, within one month after the discovery of such error, in the presence of the parent or parents of the child baptized [§ 15]; the corrections being certified in the certified copy of the entry.

The "Act for registering Births, Deaths, and Marriages in England" has a clause to the effect that "nothing herein contained shall affect the registration of baptisms as now by law established" [6 & 7 Will. IV. ch. 86, § 49], and baptismal registers are evidence in Courts of Law.

Fees for the registration of Baptisms are unlawful, being so declared by the Act named in the preceding page.

When a child is registered by the Registrar of Births before baptism, without a name, or with a name other than

that given it in baptism, a certificate may be procured from the minister baptizing of the name given in baptism, and therefrom the baptismal name is entered in the Register of Births. This must be done within twelve months of the registration of the birth. The minister is entitled to a fee of one shilling for giving the certificate. [37 & 38 Vict. ch. 88, § 54.]

Chapter II.

CONFIRMATION.

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§ 3. *Administration of the Rite* . . 74

FROM the days of the apostles, and in every orthodox branch of the Church, the sacrament of baptism has always been followed up (at an interval of time varying according to circumstances) by a complementary rite known under the various names of "the Laying on of Hands," "the Seal," "the Anointing," and very generally in the Western Church, since the fourth century, by that of "Confirmation."

The outward sign of "Laying on of Hands" was instituted by our Lord, but there is no record of His having appointed it to be used in the form of confirmation. As the rite does not, therefore, answer fully to the Anglican definition of a sacrament, as "*an outward and visible sign* of an inward and spiritual grace given unto us, *ordained by Christ Himself*, as a means whereby we receive the same, and a pledge to assure us thereof," it is said "not to be counted for a sacrament of the Gospel," nor having the

like nature of a sacrament with baptism and the Lord's Supper," but as "commonly called" a sacrament [Art. of Rel. xxv.] in an inferior degree by the custom of the Church.

There is no statute law respecting confirmation except the Book of Common Prayer; legislation respecting it does not, therefore, come down lower than the year 1661, but in the Prayer Book and in the canons there are regulations respecting the persons to be confirmed, the preparation for, and the administration of, the rite.

§ 1. *Persons to be Confirmed.*

Since it is a confirmation of the baptism of the baptized, none but Christians are competent to receive the rite. The title of the office is, therefore, now, as it was in the old Latin office, "the Order of Confirmation, or laying on of hands upon those that are baptized . . ."[1]

The nature of the rite does not in itself make a rational mind essential to its due administration, any more than in the case of baptism; but the English office is so framed that it can only be properly used in the case of those who can say the Creed, the Lord's Prayer, and the Ten Commandments, with the other portions of the Catechism; who can intelligently answer, "I do," to a certain question asked of them by the bishop, and who have "come to years of discretion," as stated in the title of the office. These conditions are also imposed by the 61st canon of 1603. There can be no doubt, then, that idiots and

[1] "Confirmatio puerorum et aliorum baptizatorum."



lunatics are excluded from the number of those who are to be brought to the bishop to be confirmed by him. The reason of this difference between the case of Baptism and that of Confirmation is, because the first is essential, and the second is not essential, to salvation; and because in the first the consentient mind of the sponsors or sureties is sufficient, while the second requires the active participation of the recipient. Rational-minded Christians, who have "come to years of discretion," are, therefore, the proper recipients of confirmation, but what is meant in this case by "years of discretion" requires some further interpretation.

In the primitive Church confirmation was administered immediately after baptism, whether the newly-baptized person was an adult, a child, or an infant. But as baptism came to be administered at times when a bishop was not present, some delay necessarily followed in the reception of the other rite, at least in the Western Church, where it has always been conferred by bishops, and bishops only.[1] But the confirmation of infants grew less and less common, and in mediæval times an interval of three to seven years ensued between baptism and its administration. There is in existence a canon of 1220 which provided that if a child remained unconfirmed beyond seven years of age neither its father nor its mother should enter the church until the rite had been performed.[2]

[1] In the Eastern Church the chrism is blessed by a bishop, and its use, with certain ceremonies by the priest, is taken as confirmation.

[2] Passed by a synod of Durham. [Wilk. *Conc.* i. 576.]

In the year 1549 a long rubric was prefixed to the office (of which the first half is still retained), which began by stating that "none hereafter shall be confirmed but such as can say in their mother tongue the Articles of the Faith, the Lord's Prayer, and the Ten Commandments, and can also answer to such questions of this short catechism," at that time prefixed to the office, "as the bishop (or such as he shall appoint) shall, by his discretion, appose them in." A similar clause was inserted in the admonition to godfathers and godmothers which was placed at the end of the Office for Public Baptism, and also in a rubric at the end of the Catechism. The 61st canon of 1603 enforced the same point in an equally definite form. "Every minister that hath cure and charge of souls, for the better accomplishing of the orders prescribed in the Book of Common Prayer concerning confirmation, shall take especial care that none shall be presented to the bishop for him to lay his hands upon, but such as can render an account of their faith, according to the catechism in the said book contained."

It thus appears that a standard of intellectual qualification is required which is certainly not to be met with in many children at so early an age as that at which they were confirmed in the mediæval Church of England. Some weight must also be attached to the expression "come to years of discretion," which is used both in the title and in the prefatory admonition of the office, and which would clearly mean the "*pubertas*" or "age of discretion" of the civil law, adopted by the canon law, i.e., fourteen years. On the other hand, this question of age

is illustrated, and, to a certain extent, interpreted by an authoritative document drawn up by the bishops in 1559 as an explanation of the queen's injunctions, in which it is directed "that children be not admitted to the communion before the age of twelve or thirteen years, being of good discretion, and well instructed before."[1] It seems therefore, "that twelve or thirteen years of age, but not less, would make a candidate fit for confirmation in the eye of the Church; and that confirmation ought not to be postponed beyond the period of coming to *pubertas*, or years of discretion."[2]

§ 2. *Preparation for the Rite.*

The latter part of the 61st canon of 1603 enjoins: "And when the bishop shall assign any time for the performance of that part of his duty, every such minister shall use his best endeavour to prepare and make able, and likewise to procure as many as can be then brought, and by the bishop to be confirmed."

The mode of such preparation is indicated by the rubrics and canon already quoted; and it is further shown

[1] Cardwell's *Documentary Anna's*, i. 206. About the same time, the Catechism of the Council of Trent marked out the age for confirmation as between seven and twelve years. [*Catech. Trident.* iii. *qu.* 7.]

[2] It may be useful to append the following extract from an official circular issued by the Bishop of Rochester in the year 1869. After giving notice of the time of holding confirmations, he says:—"I leave the age at which young persons shall be confirmed wholly to your discretion. The age at which a child is fit to be confirmed varies according to different dispositions, circumstances, and the influences of home companions and condition of life."

by the second title of the Catechism "An Instruction to be learned of every person before he be brought to be confirmed by the bishop." The 59th canon, which is on the subject of catechizing, evidently points also towards preparation for confirmation: "Every parson, vicar, or curate, upon every Sunday and holy-day, before Evening Prayer, shall, for half an hour or more, examine and instruct the youth and ignorant persons in his parish, in the Ten Commandments, the Articles of the Belief, and in the Lord's Prayer; and shall diligently hear, instruct, and teach them the Catechism set forth in the Book of Common Prayer. And all fathers, mothers, masters, and mistresses, shall cause their children, servants, and apprentices, which have not learned the Catechism, to come to the church at the time appointed, obediently to hear, and to be ordered by the minister, until they have learned the same. And if any minister neglect his duty herein, let him be sharply reproved upon the first complaint, and true notice thereof given to the bishop or ordinary of the place. If, after submitting himself, he shall willingly offend therein again, let him be suspended; if so the third time, there being little hope that he will be therein reformed, then excommunicated, and so remain until he will be reformed. And likewise if any of the said fathers, mothers, masters, or mistresses, children, servants, or apprentices, shall neglect their duties, as the one sort in not causing them to come, and the other in refusing to learn, as aforesaid, let them be suspended by their ordinaries (if they be not children); and if they so persist by the space of a month, then let them be excommunicated."



The present rubric so far supersedes this canon that it directs the clergyman to catechize after the Second Lesson at Evening Prayer. It is plain that both canon and rubric contemplate catechizing as an open and public ministration in the Church, and in the face of a congregation: and however diligently *school* or *private* catechizing may be carried on, it cannot be considered as adequately satisfying the law of the Church. But catechizing can scarcely be said to include the whole of what is contemplated by the "best endeavour" of the clergyman to "prepare and make able" candidates for confirmation; and these words must doubtless be interpreted as including something of that private intercourse and admonition which the clergy are accustomed to use.

§ 3. *Administration of the Rite.*

The frequency with which bishops were accustomed to administer confirmation in the times preceding the seventeenth century depended, no doubt, as in later times, upon the pastoral diligence or neglect with which they presided over their dioceses. Bishop Cosin speaks of an "offensive liberty that herein hath been commonly taken, to confirm children in the streets, in the highways, and in the common fields, without any sacred solemnity" [Cosin's Works, v. 522]; and this practice was certainly much older than the seventeenth century. Probably every opportunity was taken by the bishops of confirming children wherever they found them, and by parents of bringing their children to the bishop whenever and wherever he came within reach. But the formal time is

stated in the 60th canon of 1603 (which now regulates the practice of the Church) to have been every third year. The 60th canon is as follows:—"Forasmuch as it hath been a solemn, ancient, and laudable custom in the Church of God, continued from the Apostles' times, that all bishops should lay their hands upon children baptized and instructed in the Catechism of Christian religion, praying over them, and blessing them, which we commonly call *confirmation;* and that this holy action hath been accustomed in the Church in former ages, to be performed in the bishop's visitation every third year; we will and appoint, that every bishop or his suffragan, in his accustomed visitation, do in his own person carefully observe the said custom. And if in that year, by reason of some infirmity, he be not able personally to visit, then he shall not omit the execution of that duty of confirmation the next year after, as he may conveniently." But some modern bishops go beyond the mere letter of the Church's law, and hold confirmations every year, Lent being the most general time for so doing.

The modern practice of certifying to the bishop the competency of those presented to him is for each clergyman to give to those whom he has instructed and catechized, and of whom he approves, a certificate in this form: "Confirmation, 1871. Parish of West Layton. John Smith, aged 13 years. Examined and approved by me, William Featherstone, Vicar." This certificate is presented by the candidate to the bishop through the hands of his chaplain. The rubric at the end of the Catechism is also complied with, which directs: "And whensoever the

bishop shall give knowledge for children to be brought unto him for their confirmation, the curate of every parish shall either bring, or send in writing, with his hand subscribed thereunto, the names of all such persons within his parish, as he shall think fit to be presented to the bishop to be confirmed. And, if the bishop approve of them, he shall confirm them in manner following."

Cases have been known in which a bishop has refused to confirm candidates so presented to him, a considerable number having been on one occasion sent back from the altar unconfirmed by Bishop Baring of Durham, because they had not reached the standard of age required by him. But in a somewhat similar case elsewhere, such prompt and definite action was taken by an offended parent as to convince the bishop concerned that if the candidate was otherwise "fit," according to the standard laid down in rubrics and canons, it was illegal to refuse him confirmation on account of age.

The last rubric but one which follows the Catechism directs that "every one shall have a godfather or a godmother as a witness of their confirmation." The 39th canon refers to the same custom when it says, "Neither shall any person be admitted godfather or godmother to any child at . . . confirmation before the said person so undertaking hath received the Holy Communion." The practice, however, of having sponsors or sureties at confirmation (whether the same or different persons from those who were sponsors at baptism) is almost obsolete.

The essential act of confirmation is the imposition of hands by the bishop: the rubric therefore orders that

when the preliminary prayers, &c., have been said, "Then all of them in order kneeling before the bishop, he shall lay his hand upon the head of every one severally, saying" There is not any legal necessity for the imposition of both hands, but a loving minister of the rite would probably do so. Too often the essential part of the rite is hurried over, and much time spent on "addresses," for which there is no provision in the office, and which are assuredly not an essential part of the rite. This custom has led to that of saying the words of invocation over three, or many more, at once, instead of over "every one severally;" and the best of "addresses" are as poor by way of substitute for such individual application of those solemn words, as they are by way of counterpoise to so important a deviation from the law of the Church.

No legal provision is made for a register of persons confirmed, but a canon of A.D. 1322 reasserts the ancient rule that confirmation may not be repeated, and some such register seems to be very necessary.

Chapter III.

THE HOLY COMMUNION.

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§ 4. *Administration of the Sacrament* . . 101

SOME corrupt customs of late mediæval times and the controversies which gathered round the Reformation led to an epoch of legislation respecting the Holy Eucharist, which extended over a quarter of a century, beginning with the 4th of the Ten Articles of Religion [A.D. 1536], and substantially ending with the 28th, 29th, and 30th of the Thirty-nine Articles of Religion. [A.D. 1562.] This legislation was sometimes of a reforming, at other times of a reactionary character, and has been so much misrepresented that a short account of it will be necessary as an introduction to the existing law on the subject.

§ 1. *Settlement of Law respecting the Holy Communion.*

On July 10th, 1536, the convocation of Canterbury and deputies from that of York subscribed to Ten Articles of Religion, which subsequently received the royal assent and were promulgated by the Crown. The 4th of these

canons was as follows:—"As touching the sacrament of the altar, we will that all bishops and preachers shall instruct and teach our people committed by us unto their spiritual charge, that they ought and must constantly believe that under the form and figure of bread and wine, which we there presently do see and perceive by outward senses, is verily, substantially, and really contained and comprehended the very self-same body and blood of our Saviour Jesus Christ, which was born of the Virgin Mary, and suffered upon the cross for our redemption, and that under the same form and figure of bread and wine, the very self-same body and blood of Christ is corporally, really, and in the very substance exhibited, distributed and received of all them which receive the said sacrament; and that therefore the said sacrament is to be used with all due reverence and honour, and that every man ought first to prove and examine himself, and religiously to try and search his own conscience, before he shall receive the same; according to the saying of St. Paul, *Quisquis ederit panem hunc aut biberit de poculo Domini indigne, reus erit corporis et sanguinis Domini; probet autem seipsum homo, et sic de pane illo edat et de poculo illo bibat; nam qui edit aut bibit indigne, judicium sibi ipsi manducat et bibit, non dijudicans corpus Domini:* that is to say, whosoever eateth this body of Christ unworthily, or drinketh of this blood of Christ unworthily, shall be guilty of the very body and blood of Christ; wherefore let every man first prove himself, and so let him eat of this bread, and drink of this drink. For whosoever eateth it or drinketh it unworthily, he eateth and drinketh it to his own

damnation; because he putteth no difference between the very body of Christ and other kinds of meat."

In the "Institution of a Christian Man" [A.D. 1537], this was reproduced without any addition; but in the revision of this book, the "Necessary Doctrine and Erudition of any Christian Man" [A.D. 1443], there is a long exposition, in which the language approaches to the Roman dogma of Transubstantiation. This was in accordance with the "Act for abolishing of Diversity of Opinions in certain Articles concerning Christian Religion," commonly called "The Act of Six Articles" [31 Henry VIII. ch. 14], which had been passed in the year 1539. The first, second, and fifth of these articles relate to the Holy Communion, and are as follows:—

"1st. That in the most blessed Sacrament of the Altar by the strength and efficacy of Christ's mighty word (it being spoken by the priest), is present really, under the form of bread and wine, the natural body and blood of Our Saviour Jesus Christ, conceived of the Virgin Mary; and that after the consecration there remaineth no substance of bread or wine, nor any other substance, but the substance of Christ, God and Man.

"2nd. That the communion in both kinds is not necessary, 'ad salutem,' by the law of God, to all persons; and that it is to be believed, and not doubted of, but that in the flesh, under form of bread, is the very blood, and with the blood, under form of wine, is the very flesh, as well apart, as though they were both together.

"5thly. That this is meet and necessary, that private masses be continued and admitted in the King's English

Church and congregation; as whereby good Christian people, ordering themselves accordingly, do receive both godly and goodly consolations and benefits; and it is agreeable also to God's law."

The Six Articles are believed to have been drawn up by the king's own hand, and they were passed both in Convocation and Parliament, under the influence of the terrorism exercised by his threats in the one, and his presence in the other. This Act was repealed by 1 Edw. VI. ch. 12, and was never revived; and it is the only instance in which the doctrine of the "annihilation of the natural substances" has been set forth in the Church of England by authority.

Shortly after the accession of Edward VI., the "Order of Communion," which was afterwards incorporated into the Prayer Book, and which had been prepared by direction of Henry VIII. shortly before his death,[1] was set forth by Convocation, ratified by Parliament, and issued under a proclamation of the Crown on March 8th, 1547–8. In the same session of Parliament an Act was passed "against such as shall unreverently speak against the Sacrament of the Altar, and of the receiving thereof under both kinds." [1 Edw. VI. ch. 1.] The 8th clause of this Act is as follows: "And forasmuch as it is more agreeable, both to the first institution of the said sacrament of the most gracious body and blood of our Saviour Jesus Christ, and also more conformable to the common use and practice both of the Apostles and of the primitive Church, by the space of five hundred years and more after Christ's

[1] Blunt's *Annotated Book of Common Prayer*, 150.

ascension, that the said blessed sacrament should be ministered to all Christian people *under both the kinds* of bread and wine, than under the form of bread only: and also it is more agreeable to the first institution of Christ, and to the usage of the Apostles, and the primitive Church, that the people being present should receive the same with the priest, than that the priest should receive it alone: therefore it be enacted by our said sovereign lord the king, with the consent of the lords spiritual and temporal, and the commons, in this present Parliament assembled, and by the authority of the same, that the said most blessed sacrament be hereafter commonly delivered and ministered unto the people within the Church of England and Ireland, and other the king's dominions, under both the kinds, that is to say, of bread and wine, except necessity otherwise require."

This Act was repealed by 1 Mary, sess. ii. ch. 2, but revived by 1 Eliz. ch. 1, § 5, and it still remains in force. A similar statute of the next reign also remains in force [1 Mar. sess. ii. ch. 3], portions of which are especially levelled against irreverence towards the blessed sacrament, the remaining sections relating to irreverence during other parts of Divine Service.

Subsequent legislation respecting the Holy Communion at the time of the Reformation was that of the Prayer Book [2 & 3 Edw. VI. ch. 1., 5 & 6 Edw. VI. ch. 1, 1 Eliz. ch. 2] in the years 1548–9, 1552–3, and 1558; and of the Thirty-nine Articles, in the years 1553 and 1562. The revision of the Prayer Book in 1661–2 [14 Car. II. ch. 4] modified the previous law in a slight

degree, and some additions (explanatory rather than legislative) were made in the canons of 1603.

This epoch thus saw the legislative settlement of most of the controversies which had agitated the Church of England upon this sacred subject. Controversies have since arisen, but they are determinable by a judicial exposition of the Reformation settlement, as expressed in the Book of Common Prayer,[1] the Articles of Religion, the Acts of Parliament, and the canons of the year 1603.

§ 2. *The Doctrine of the Holy Communion.*

The subject of this section is of so strictly a theological nature, that there is some difficulty in looking at it merely in its aspect as a question of ecclesiastical law. It is necessary to premise, therefore, that the subject will be considered solely with reference to the question, What is the doctrine respecting the Holy Communion set forth in documents of legal obligation in the Church of England? What those documents are, has been shown in the preceding section.

The Holy Communion a sacrament.

Four times in the exhortations, and once in the rubrics of "The Order for the Administration of the Lord's Supper or Holy Communion," the rite itself is called a "Holy Sacrament," and once in the former it is called "the most comfortable Sacrament of the Body and Blood of Christ." In the rubrics of the same Order for the Communion of the Sick it is also called "the Sacrament," "the Holy Sacrament," and "the Sacrament of Christ's Body and Blood." In the

[1] The force of the "Ornaments Rubric" must of course be understood to be included in what is here said.

25th Article of Religion it is said, "There are two sacraments ordained of Christ our Lord in the gospel, that is to say, Baptism, and the Supper of the Lord:" and in the 28th Article it is said to be "a Sacrament of our Redemption by Christ's Death," and is called "the Sacrament of the Lord's Supper." In the 29th Article it is called "the Sacrament of the Body and Blood of Christ," and in the 30th Article "the Lord's Sacrament."

What a sacrament is.

An exact definition of the word thus used so often is given in the later part of the Catechism, together with its application to the Lord's Supper: "*Question.* What meanest thou by this word sacrament? *Answer.* I mean an outward and visible sign of an inward and spiritual grace, given unto us, ordained by Christ Himself, as a means whereby we receive the same, and a pledge to assure us thereof. *Question.* How many parts are there in a Sacrament? *Answer.* Two; the outward visible sign, and the inward spiritual grace. *Question.* What is the outward part or sign of the Lord's Supper? *Answer.* Bread and wine, which the Lord hath commanded to be received. *Question.* What is the inward part or thing signified? *Answer.* The Body and Blood of Christ, which are verily and indeed taken and received by the faithful in the Lord's Supper."

What the sacrament of the Lord's Supper is.

The contrary opinion.

The force of this definition will be appreciated by remembering that when it was imposed upon the Church of England there were many divines, as there still are, in whose opinion the Holy Communion consists substantially of only one part; that is,

that it consists of bread and wine alone, which are received as a sign of communion with God and men. The words used in the "Order" for its celebration show that this is not the doctrine of the Church of England.

In that Order the minister when "giving warning for the celebration of the Holy Communion," is directed to say that it is "the most comfortable Sacrament of the Body and Blood of Christ;" that Almighty God our Heavenly Father "hath given His Son, our Saviour Jesus Christ, not only to die for us, but also to be our spiritual food and sustenance in that holy sacrament:" that in receiving that holy sacrament "we spiritually eat the flesh of Christ, and drink His blood." In the "Prayer of humble Access," the "Priest kneeling down at the Lord's Table" is to pray "in the name of all them that shall receive the Communion," "Grant us therefore, gracious Lord, so to eat the flesh of Thy dear Son Jesus Christ, and to drink His blood, that our sinful bodies may be made clean by His body, and our souls washed by His most precious blood." In the Prayer of Consecration are the words "grant that we receiving these Thy creatures of bread and wine according to Thy Son our Saviour Jesus Christ's holy institution, in remembrance of His death and passion, may be partakers of His most blessed body and blood." The words of administration, when the priest "delivereth the bread to any one," administer it as "the body of our Lord Jesus Christ, which was given for thee;" and when he "delivereth the cup," "the blood of our Lord Jesus Christ, which was shed for thee." In the second Prayer

The "inward part" of the sacrament referred to in the Communion Office.

of Thanksgiving, God is thanked "for that Thou dost vouchsafe to feed us, who have duly received these holy mysteries, with the spiritual food of the most precious body and blood of Thy Son our Saviour Jesus Christ."

This cumulative evidence of the Communion Office is also corroborated by the 28th Article of Religion, which is directly aimed against the opinion referred to. It asserts that "The Supper of the Lord is not only a sign of the love that Christians ought to have among themselves one to another, but rather is a sacrament of our redemption by Christ's death: insomuch that to such as rightly, worthily, and with faith receive the same, the bread which we break is a partaking of the body of Christ; and likewise the cup of blessing is a partaking of the blood of Christ."

In the 28th Article.

Again, by the 28th Article, which states that "the body of Christ is given, taken, and eaten in the Supper, only after an heavenly and spiritual manner," and received and eaten by faith. Also by the 29th Article of Religion, which carefully distinguishes "the Sacrament of the Body and Blood of Christ" as received by all, from "Christ," partaken of only by the faithful.

In the 28th Article.

In the 29th Article.

Further corroboration is given by the Acts of Parliament respecting "the Sacrament of the Altar." The one of these speaks of "the most comfortable Sacrament of the Body and Blood of our Saviour Jesus Christ, commonly called the Sacrament of the Altar, and in Scripture, the Supper [1 Cor. xi. 20], and Table of the Lord [1 Cor. x. 21], the

In the Acts of Parliament still in force.

Communion [1 Cor. x. 16], and partaking of the body and blood of Christ [1 Cor. x. 16, 17]." [1 Edw. VI. ch. 1. § 1.] The other adopts precisely the same term, calling it "the most blessed, comfortable, and holy Sacrament of the Body and Blood of our Saviour Jesus Christ, commonly called the Sacrament of the Altar." [1 Mar. sess. 2, ch. 3, § 1.]

In the case of Sheppard *v.* Bennett, the judge of the Court of Arches made these remarks respecting the Church of England doctrine on this subject. "That there is a change in the holy elements after consecration, and that they then convey in a divine and ineffable way, the body and blood of Christ, seem necessary inferences from the language of the Communion Service alone."[1] "With respect, therefore, to the charges in the criminal articles against Mr. Bennett, for describing the Presence in the Holy Eucharist as 'actual' and 'objective,' I must hold that by the use of these expressions he has not contravened the formularies of our Church, or committed any ecclesiastical offence."[2] "I say that the Objective, Actual, and Real Presence, or the Spiritual, Real Presence, a Presence external to the act of the communicant, appears to me to be the doctrine which the formularies of our Church, duly considered and construed so as to be harmonious, intended to maintain. But I do not lay down this as a position of law, nor do I say that what is called the Receptionist Doctrine is inadmissible; nor do

By decision of the Court of Arches.

[1] Phillimore's Ed., p. 17; Sir R. Phillimore's *Eccl. Judg.*, p. 228.

[2] Ibid. p. 96; *Eccl. Judgments*, p. 298.



I pronounce on any other teaching with respect to the *mode* of Presence. I mean to do no such thing by this judgment. I mean by it to pronounce only that to describe the mode of Presence as Objective, Real, Actual, and Spiritual, is certainly not contrary to the law."[1]

Sacrificial aspect of the Holy Communion.

The same judge also declared "I am led, therefore, to the certain conclusion, that it is lawful for a clergyman to speak in some sense of the Eucharistic sacrifice, and therefore, in some sense, also of 'the sacrifice offered by the priest,' and 'the sacrificial character' of the Holy Table."[2] The sense apparently in the mind of the judge was that of a sacrifice in commemoration of the sacrifice of Christ, made by Christ Himself, and not of a sacrifice of propitiation.[3]

The language of many divines of the Church of England is indeed strong and clear in support of the sacrificial aspect of the Holy Communion. It is verbally recognized, however, in the office for its celebration only by the following expressions: In the second exhortation, "it is your duty to receive the Communion in remembrance of the sacrifice of His death, as He Himself hath commanded." In the Thanksgiving Prayer, "We Thy humble servants entirely desire Thy Fatherly goodness mercifully to accept this our sacrifice of praise and thanksgiving. And although we be unworthy through our manifold sins to offer unto Thee any sacrifice, yet we beseech

[1] Phillimore's Ed., p. 135; *Eccl. Judgments*, p. 333.
[2] Ibid. p. 102; *Eccl. Judgments*, p. 302.
[3] Ibid. p. 122; *Eccl. Judgments*, p. 322.

Thee to accept this our bounden duty and service; not weighing our merits, but pardoning our offences"

But that the Eucharistic Sacrifice is not regarded by the Church of England as a satisfaction for sin, is shown by the 31st Article of Religion: "The offering of Christ once made, is that perfect redemption, propitiation, and satisfaction, for all the sins of the whole world, both original and actual; and there is none other satisfaction for sin but that alone. Wherefore the sacrifices of masses, in the which it was commonly said that the priest did offer Christ for the quick and the dead, to have remission of pain or guilt, were blasphemous fables, and dangerous deceits."

Not a sacrifice in satisfaction for sin.

In a similar manner, it is shown by the 28th Article of Religion, that the "Real Presence" of the body and blood of Christ, under the form of bread and wine, is not regarded as annihilating the substance of that bread and wine, the "outward part" and "inward part" of the sacrament, both existing together in the sacrament. "Transubstantiation (or the change of the substance of the bread and wine) in the Supper of the Lord cannot be proved by Holy Writ; but is repugnant to the plain words of Scripture, overthroweth the nature of a sacrament, and hath given occasion to many superstitions."

Nor a Presence by transubstantiation to the exclusion of the natural substances used.

To sum up in a few words the doctrine of the Church of England on the subject of the Holy Communion, it may be said then that it is regarded (1) as a sacrament; (2) as a sacrament consisting of an outward and an inward part; (3) that the inward part consists of the body and

blood of Christ, present under the form of the outward part, consecrated bread and wine; (4) that the sacrament is a commemorative sacrifice; and (5) that the outward part, the consecrated bread and wine, conveys to the faithful communicant the inward part which co-exists with the outward, the body and blood of Christ.

§ 3. *The Celebration of the Sacrament.*

The laws which regulate the celebration of the Holy Communion, as distinct from its administration or reception, may be considered as regards their application to the elements, the accessories, and the mode in which the elements are to be made a sacrament.

Natural substances used.

The natural substances, or ELEMENTS, to be used are (according to our Lord's original institution) bread and wine. But, as various kinds of these have been, and are, used for the sacrament, it is necessary to ascertain what is the "use" or custom of the Church of England in respect to them.

The bread.

The ancient custom in England, and throughout Europe, was to use unleavened bread, made in the form of thin wafers,[1] on the ground that unleavened bread was used by our Lord in the institution of the Eucharist (it being Passover time), and that substances used for leavening bread are of an impure nature, which it is not right to bring into contact with a substance used

[1] Throughout the Eastern Church a leavened loaf, in the form of a flat cake or "bun," is used, under the idea that fermented bread is more perfectly bread than that which is unleavened.

for so holy a purpose. The rubric of the Prayer Book in 1549 enjoined that the bread should be "unleavened and round, as it was afore, but without all manner of print,[1] and something more larger and thicker than it was, so that it may be aptly divided in divers pieces: and every one shall be divided in two pieces at the least, or more, by the discretion of the minister, and so distributed. And men must not think less to be received in part than in the whole, but in each of them the whole body of our Saviour Jesu Christ." In 1552 this rubric was altered to its present form, which is, that "it shall suffice that the bread be such as is usual to be eaten, but the best and purest wheat bread that can conveniently be gotten."

In Queen Elizabeth's Injunctions [A.D. 1569] there is this direction—"*Item*, Where also it was in the time of K. Edward the Sixt used to have the sacramental bread of common fine bread, it is ordered for the more reverence to be given to these holy mysteries, being the sacraments of the body and blood of our Saviour Jesus Christ, that the same sacramental bread be made and formed plain, without any figure thereupon, of the same finenesse and fashion round, though somewhat bigger in compasse and thicknesse, as the usuall bread and wafer, heretofore named singing cakes, which served for the use of the private masse." Archbishop Parker, when appealed to as to the meaning of the rubric, wrote: "It shall suffice, I expound, where either there wanteth such fine usual bread, or superstition be feared in the wafer-bread, they

[1] The Eucharistic wafers were before this commonly marked with an "Agnus Dei."

may have the Communion in fine usual bread; which is rather a toleration in these two necessities, than is in plain ordering, as it is in the injunction." [*Correspondence*, p. 376.] He also wrote to Sir William Cecil, "As you desired, I send you here the form of the bread used, and was so appointed by order of my late Lord of London" [Grindal] "and myself, as we took it not disagreeable to the injunction. And how so many churches have of late varied I cannot tell; except it be the practice of the common adversary, the devil, to make variance and dissension in the sacrament of unity." [*Ibid.* 378.] Parker was also consulted by Parkhurst, Bishop of Norwich, on the subject. He first referred him to the rubric and injunction, and in a subsequent letter wrote, "I trust that you mean not universally in your diocese to command or wink at the loaf-bread, but, for peace and quietness, here and there to be contented therewith." [*Ibid.* 460.] In his Visitation Articles, Parker also inquired, "And whether they do use to minister the Holy Communion in wafer-bread, according to the Queen's Majesty's Injunctions?"

Thus the contemporary interpretation of the rubric was plainly that the sacramental bread was usually to be in the form of wafers, but that for peace and quietness' sake, where wafers were objected to, "the best and purest wheat bread that may conveniently be gotten," might be permitted.

The question as to the use of wafer-bread came before the Courts in the case of Mr. Purchas. The judge of the Arches Court held that it was not illegal to use "bread made in the special shape and fashion of circular wafers."

[Law Rep. 3 Adm. & Eccl. p. 108.] The Privy council, however, reversed this decision, and held that such use was illegal.

There has never been any controversy in the Church of England respecting the kind of wine which is to be used for the Holy Communion. Red and white wine are used indifferently, the great object being to secure a true fermented juice of the grape, no unfermented juice of the grape, nor any other fluid than wine, being considered valid for the purpose by theologians. There has, however, been much discussion as to the custom of mixing water with the wine before consecration. This ancient custom was directed by the Prayer Book of 1549, in the words which order that the minister taking so much wine as shall suffice, "and putting the wine into the chalice, or else in some fair and convenient cup prepared for that use (if the chalice will not serve), putting thereto a little pure and clean water, setting both the bread and wine upon the altar." But this rubric was omitted in 1552. **The wine.**

In Martin *v.* Mackonochie, and Flamank *v.* Simpson, the judge of the Court of Arches described the custom as one wholly unconnected with any papal superstition, or any doctrine which the Church of England has rejected, and as having the warrant of primitive antiquity, and of the undivided Church in its favour.[1] But he gave the following reasons for considering that it is not permitted by our existing ecclesiastical law.

[1] Sir R. Phillimore's *Eccl. Judgments*, p. 92.

"In all subsequent Prayer Books the mention of water is omitted; perhaps from the omission in the Second Prayer Book no argument unfavourable to the use of water could fairly be drawn, as no manual acts of consecration are prescribed in that book. But in the present Prayer Book the manual acts are advisedly specified with great distinctness and particularity; exact directions are given when the priest shall take into his hands the bread and the wine, when he shall place them on the table, and how he shall administer them; and I must bear in mind that the compilers of our present Prayer Book had before them the first Prayer Book of Edward VI., and carefully considered the rubrics which it contained; and, in my opinion, the legal consequence of this omission, both of the water, and of the act of mixing it with the wine, must be considered as a prohibition of the ceremony or manual act of mixing the water with the wine during the celebration of the Eucharist.

"I am by no means insensible to the very remarkable argument addressed to me by the Admiralty Advocate with respect to the analogy between the blood and water used in the prototypal service of the Passover, and the wine and water in the Eucharist; and, as I have already observed, the mingling a little pure water with the wine is an innocent and primitive custom, and one which has been sanctioned by eminent authorities in our Church, and I do not say that it is illegal to administer to the communicants wine in which a little water has been previously mixed; my decision upon this point is, that the mixing may not take place during the service, because

such mixing would be a ceremony designedly omitted in, and therefore prohibited by, the rubrics of the present Prayer Book."[1]

In this case the judge decided only that the mixing during, and as part of the service, was illegal. In the case of Mr. Purchas, the further point was raised whether it was illegal to administer wine with which water had been (previously, and not as part of the service) mixed; and the judge of the Court of Arches, in conformity with his former view, held that this administration was legal. [Law Rep. 3 Adm. & Eccl. p. 102.] The Privy Council, however, reversed this decision, and held that it was illegal.

By whom the two elements are to be provided.

It is enacted by the rubric that "the bread and wine for the Communion shall be provided by the curate and the churchwardens at the charges of the parish." This direction is more clearly given in the 20th of the canons of 1603, which is as follows:—"The churchwardens of every parish, against the time of every communion, shall, at the charge of the parish, with the advice and direction of the minister, provide a sufficient quantity of fine white bread, and of good and wholesome wine, for the number of communicants that shall from time to time receive there; which wine we require to be brought to the communion-table in a clean and sweet standing pot or stoop of pewter, if not of purer metal."

The "bringing to the communion-table" does not neces-

[1] Sir R. Phillimore's *Eccl. Judgments*, p. 93.

sarily mean during the time of Divine service, but rather at the time when preparation is made for the celebration of the Holy Communion, the elements being placed on a side table before service for the purpose.

No list of the required accessories.

The ACCESSORIES required for the celebration of the Holy Communion are not exactly catalogued in the Book of Common Prayer, the canons, or any other extant authoritative exponent of the custom of the Church of England; but what they are may be ascertained from the Communion Office and other sources of information.

Those named in the Office.

In the Communion Office itself several such accessories are named, "the Lord's Table," a "fair white linen cloth" for covering it, a "decent basin" for gathering the alms, a "paten," a "chalice," or "cup," a "flagon," and a "fair linen cloth" for covering the remnant of the consecrated elements after communion. There is no reference to the dress of the celebrant and the other ministers, but at the beginning of the Prayer Book there is a general direction (applying to the Holy Communion as well as to other parts of Divine service) which enacts, "That such ornaments of the Church, and of the ministers thereof, at all times of their ministration, shall be retained and be in use as were in this Church of England by the authority of Parliament in the second year of the reign of King Edward VI." In Liddell *v.* Westerton the Privy Council decided that "the word 'ornament' applies, and, in this rubric, is confined to those articles the use of which in the services and ministrations of the Church is prescribed by the Prayer Book of Edward

VI." in the year 1549.[1] The additional accessories there mentioned are, for the bishop, a "rochette, a surplice or albe, and a cope or vestment, and a pastoral staff;" for the priest, "a white albe plain, with a vestment or cope;" for the other ministers, "albes with tunacles:" and "the corporas," for laying the bread upon.

Those referred to by the Ornaments' Rubric.

The "corporas," being an "ornament of the Church," is therefore clearly lawful and necessary under that rubric.

The question of the "ornaments of the minister" was raised in the case of Mr. Purchas. The judge of the Arches Court, in conformity with the apparent meaning of the rubric, and the principle of the decision in Liddell *v.* Westerton, held that the ornaments or vestments of the minister just mentioned, which were ordered by the First Prayer Book of Edward VI., were, at any rate, not unlawful. [*Law Rep.* 3 Adm. & Eccl. p. 94; Sir R. Phillimore's *Eccl. Judgments*, p. 178.] The Privy Council, however, reversed this decision, and held that they were all unlawful. They held, however, at the same time, that under the 24th canon of 1603, the principal minister or celebrant in cathedral or collegiate churches should wear a cope upon principal feast days. By the 82nd canon a carpet of silk, or other decent stuff, is ordered for the Lord's Table during Divine service.[2]

[1] Brodrick and Fremantle, p. 129.

[2] It should be noticed that on an application for a re-hearing the Court intimated that the judgment in the Purchas case might perhaps only affect Mr. Purchas. [*Eccl. Gaz.* vol. xxxiv. p. 13.]

The accessories thus enacted by the Prayer Book now in force [14th Carol. II. ch. 4], by that to which it refers [2nd & 3rd Edw. VI. ch. 1], and by the canons of A.D. 1603, may be thus summed up:

Summary.

The Lord's Table (called "altar" in the earlier Prayer Book[1]) is to be ordinarily covered "with a carpet of silk, or other decent stuff thought meet by the ordinary of the place, if any question be made of it;" and during the time of celebration a "fair white linen cloth" is to be placed over this.

The utensils for the Lord's Table are to be a "decent basin" for gathering and offering the alms, a "flagon" for holding the supply of wine, a "corporas" (or small linen cloth) on which to place the sacred vessels during consecration, a "paten" to contain the bread during consecration, a "chalice," or "cup," to contain the wine during consecration, and a "fair linen cloth" with which to cover the remains of the consecrated elements.

According to the Prayer Book of Edward VI., the celebrant, if a bishop, is to wear a "rochette," a "surplice or albe," a "cope or vestment," and his pastoral staff is to be borne by his chaplain. If a priest, the celebrant is to wear a "white albe plain," and "a vestment or cope."[2]

The other ministers (restricted to two, "the gospeller and epistoller," in the 24th canon) being dressed "agreeably" to the principal minister [the 24th canon], that is, in "albes" and tunacles." According to the ruling of the

[1] It is also so called in several of the Church Building Acts.

[2] There is some confusion as to the "cope" here named; and it is not unlikely that it means the ancient "principal vestment," one of special richness and size.

Privy Council in the case of Mr. Purchas (if it be correct) the celebrant is only to wear a surplice (and a cope in cathedral or collegiate churches), in which latter case only would the other ministers wear albes with tunacles.

This list cannot be considered as altogether exhaustive, for the "credence," or side table, which, it has been ruled [Liddell *v.* Westerton], is required for the reception of the elements until the time of the offertory, is not included in it. Any accessories required for the celebration of the Holy Communion according to the rubrics, are lawful, the use of these being regulated and controlled by the ordinary.[1]

Other accessories permissible.

MAKING THE ELEMENTS A SACRAMENT is, of course, the one object of all connected with the *celebration* of the Holy Communion, the "inward part" of "the Body and Blood of Christ" alone giving any spiritual value or efficacy to the "outward part" of "bread and wine." A very few words on the mode of doing so prescribed by the Church of England will, however, be sufficient for the purpose of this work.

The Lord's Table having been prepared, and the elements provided and brought there, the rubric directs that when the alms have been humbly presented and placed upon it, "the priest shall then place upon the table so much bread and wine as he shall think sufficient:" the bread and wine being brought from the side-table or "credence" where

Oblation of the bread and wine.

[1] For a more detailed account the reader may refer to Blunt's *Annotated Book of Common Prayer*, Ritual Introduction, Section III., on "The Accessories of Divine Service."

they have hitherto stood, for the purpose. But two rubrics at the end of the office enact that "there shall be no celebration of the Lord's Supper except there be a convenient number to communicate with the priest, according to his discretion. And if there be not above twenty persons in the parish of discretion to receive the Communion; yet there shall be no Communion, except four (or three at the least) communicate with the priest."[1]

When, however, there is a celebration and Communion, this is the time at which to place the bread and wine upon the altar. Thus placed on the Lord's Table, they are offered to His service by the words "We humbly beseech Thee most mercifully to accept our . . . oblations," and remain there until the time of consecration.

Consecration of the bread and wine.

The oblations of bread and wine are then taken into the celebrant's hands, with the "manual gestures" ordered in the marginal rubric annexed to the Prayer of Consecration, and the "Words of Institution" being at the same time used,[2] the bread and wine become (in a way which the Church of England does not profess to explain) associated with the Body and Blood of Christ; the "outward part" and the "inward part," thus associated, constituting the sacramental Substance given in the Lord's Supper, or Holy Communion.

It is not necessary to repeat here what has been said in the previous section as to the doctrine which the Church

[1] This rubric came under notice in the judgment of Lord Penzance, in Clifton *v.* Ridsdale, February, 1876.

[2] "No bread or wine newly brought shall be used; but first the words of institution shall be rehearsed." [Canon 21.]

of England holds respecting the "Sacrament" so constituted. But it may be recalled to mind that the judge of the Arches Court has declared his opinion that the formularies of the Church are intended to maintain a presence of Christ's body and blood in the Sacrament, "external to the act of the communicant;" and existing, therefore, as a consequence of consecration, before the consecrated elements are "given, taken, and eaten." [28th Article of Religion.]

Results of consecration.

§ 4. *The Administration of the Sacrament.*

The only points further to be noticed, are in what manner, and to whom, the Sacrament of the Holy Communion is to be administered.

THE MODE OF ADMINISTRATION is exactly prescribed, both with reference to the person or persons administering, and to the person receiving.

By the directions of the office the Holy Communion is to be administered in both kinds. This is also directed by 1 Edw. VI. ch. 1, § 8, and the 30th Article of Religion.

Administered in both kinds.

The celebrant himself first receiving "as oft as he administereth the Communion" [Canon 21], is directed to administer both elements to the bishops, priests, and deacons (those assisting him being probably intended), and afterwards "to the people also in order." The assistance of other clergy in this administration has been used from primitive days, deacons even being permitted to give the Cup to the Laity, though not to administer the Bread, or to give either element to the clergy. [Nicene Canons,

can. xviii.] Such assistance is recognised in our present rubric, by the words "the minister that delivereth the Cup to any one," distinguishing such minister from the one who has celebrated, and delivered the Bread.

The words of administration are also prescribed, and it is directed that the holy elements shall be delivered *into the hands* of the communicants; "to every communicant severally." [Canon 21.] It cannot be doubted that the words are intended to be used to each communicant separately. They are no essential part of Communion, but some such words seem always to have been used in the Church.

The rubric directs that those who receive the Holy Communion shall be "all meekly kneeling." The Puritans made great resistance to this rule of the Church, and it was therefore enforced by the 27th canon of 1603, which enacts that "no minister, when he celebrateth the Communion, shall wittingly administer the same to any but to such as kneel, under pain of suspension."

Communicants to kneel.

THE PERSONS COMPETENT to receive the Holy Communion are defined by several rubrics and canons.

The rubric after the Confirmation Office, enacts that "there shall none be admitted to the Holy Communion until such time as he be confirmed, or be ready and desirous to be confirmed."

Communicants to be confirmed persons.

Provision is also made to exclude from the reception of it all notoriously immoral persons. The rubric at the beginning of the office directs, that persons intending to receive it shall signify their names to the clergyman having the responsible cure of

Immoral persons to be refused communion.

souls the day before, and then goes on to enact, "And if any of these be an open and notorious evil liver, or have done any wrong to his neighbours by word or deed, so that the Congregation be thereby offended; the Curate, having knowledge thereof, shall call him and advertise him, that in any wise he presume not to come to the Lord's Table, until he hath openly declared himself to have truly repented and amended his former naughty life, that the Congregation may thereby be satisfied, which before were offended; and that he hath recompensed the parties, to whom he hath done wrong; or at least declare himself to be in full purpose so to do, as soon as he conveniently may." Which enactment is similar to that in the 26th canon of 1603, the first part of which orders that "no minister shall in any wise admit to the receiving of the Holy Communion any of his cure or flock which be openly known to live in sin notorious, without repentance; nor any who have maliciously and openly contended with their neighbours, until they shall be reconciled." And by the 103rd canon of the same date: "If any offend their brethren, either by adultery, whoredom, incest, or drunkenness, or by swearing, ribaldry, usury, and other uncleanness and wickedness of life . . . Such notorious offenders shall not be admitted to the Holy Communion till they be reformed."

"The same order" adds the rubric, "shall the Curate use with those betwixt whom he perceiveth malice and hatred to reign; not suffering them to be partakers of the Lord's Table until he know them to be reconciled. And if one of the parties so at variance be content to

forgive from the bottom of his heart all that the other hath trespassed against him, and to make amends for that he himself hath offended; and the other party will not be persuaded to a godly unity, but remain still in his frowardness and malice: the Minister in that case ought to admit the penitent person to the Holy Communion, and not him that is obstinate. Provided that every minister so repelling any, as is specified in this, or the next precedent Paragraph of this Rubrick, shall be obliged to give an account of the same to the Ordinary within fourteen days after, at the farthest. And the Ordinary shall proceed against the offending person according to the Canon."

Those wantonly at variance to be refused communion.

A similar provision in the 27th canon forbids the admission of schismatics to Communion, the word "schismatics" being used in the title of the canon, and a sufficient definition given in the body of it: "No minister, when he celebrateth the Communion, shall wittingly administer the same to any but to such as kneel, under pain of suspension, nor under the like pain to any that refuse to be present at public prayers, according to the orders of the Church of England; nor to any that are common and notorious depravers of the Book of Common Prayer and Administration of the Sacraments,[1] and of the orders, rites, and ceremonies therein prescribed, or of anything that is contained in any of the articles

Schismatics to be refused communion.

[1] In the case of Jenkins *v.* Cook the Judge of the Arches Court held that a parish priest was justified in refusing to administer the Holy Communion to a layman who denied the existence of the devil and the doctrine of eternal punishment. (Phillim. *Eccl. Judgments*,

agreed upon in the Convocation, one thousand five hundred sixty and two, or of anything contained in the book of ordering priests and bishops; or to any that have spoken against, and depraved His Majesty's sovereign authority in causes ecclesiastical; except every such person shall first acknowledge to the minister, before the churchwardens, his repentance for the same, and promise by word (if he cannot write) that he will do so no more; and except (if he can write) he shall first do the same under his handwriting, to be delivered to the minister, and by him sent to the bishop of the diocese, or ordinary of the place; provided that every minister so repelling any (as is specified in this or the next precedent constitution) shall, upon complaint, or being required by the ordinary, signify the cause thereof unto him, and therein obey his order and direction."

With these exceptions it is the law of the Church of England that every person qualified for receiving the Communion shall receive it at least three times in the year. Thus the rubric at the end of the office enacts, "that every parishioner shall communicate at the least three times in the year, of which Easter to be one." The 21st and 22nd canons of 1603 also enforce the same rule, the first ordaining that "In every parish church and chapel, where Sacraments are to be administered within this realm, the

Communicants to receive three times a-year.

p. 394; *Law Rep.* 4 Admiralty & Eccl. p. 463.) The Privy Council held that there was not sufficient evidence that the layman had these disbeliefs, and on this ground reversed the judgment, and directed the priest to administer the Holy Communion to him.



Holy Communion shall be ministered by the parson, vicar, or minister, so often, and at such times, as every parishioner may communicate at the least thrice in the year (whereof the feast of Easter to be one), according as they are appointed by the Book of Common Prayer;" and the second that "whereas every lay-person is bound to receive the Holy Communion thrice every year, and many notwithstanding do not receive that Sacrament once in a year; we do require every minister to give warning to his parishioners publicly in the church at Morning Prayer, the Sunday before every time of his administering that Holy Sacrament, for their better preparation of themselves; which said warning we enjoin the said parishioners to accept and obey, under the penalty and danger of the law."

The 23rd canon increases this minimum to four times, or once in every term, in the case of members of colleges, enjoining that "In all colleges and halls within both the universities, the masters and fellows, such especially as have any pupils, shall be careful that all their said pupils, and the rest that remain amongst them, be well brought up, and thoroughly instructed in points of religion, and that they do diligently frequent public service and sermons, and receive the Holy Communion; which we ordain to be administered in all such colleges and halls the first or second Sunday of every month, requiring all the said masters, fellows, and scholars, and all the rest of the students, officers, and all other the servants there, so to be ordered, that every one of them shall communicate four times in the year at the

least, kneeling reverently and decently upon their knees, according to the order of the Communion Book prescribed in that behalf."

It is further provided by the 112th canon, that "The minister, churchwardens, questmen, and assistants of every parish church and chapel, shall yearly, within forty days after Easter, exhibit to the bishop or his chancellor the names and surnames of all the parishioners, as well men as women, which being of the age of sixteen years received not the Communion at Easter before."

Some of these provisions have obviously become obsolete, and ecclesiastical laws being rarely enforced against any members of the Church of England, except the clergy, they are most of them to be regarded as injunctions to be voluntarily accepted rather than litigiously maintained.

Chapter IV.

DIVINE SERVICE IN GENERAL.

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THE provisions for Divine Service, other than the Holy Communion and the occasional Offices, which are made in the Church of England, are restricted to Morning Prayer, Evening Prayer, and the Litany: the first two being condensed from the Matins, Lauds, Prime, Vespers and Compline of the seven "Hours," as set forth in the ancient "Portiforium," or Breviary, of the Church of England.

The law and custom respecting these three services is substantially set forth in the Book of Common Prayer. But, as in the case of the Holy Communion, the existing Prayer Book sends us back for some particulars to other Prayer Books, to Acts of Parliament, and to the canons of 1603; and it is generally subject to the rule that the Canon Law of earlier times is in force where it is not annulled by subsequent legislation.

The Offices of Morning and Evening Prayer are intended

for daily recitation, the title of each being "The Order for Morning," or for Evening "Prayer, daily throughout the year," and there being a clause in the preface "concerning the Service of the Church," which orders that "all priests and deacons are to say daily the Morning and Evening Prayer, either privately or openly, not being let by sickness, or some other urgent cause." Such also is the understanding of "The Order how the Psalter is appointed to be read," and of "The Order how the rest of the Holy Scripture is appointed to be read;" the Psalter being to be read through "once every month," the "most part" of the Old Testament "every year once," and the New Testament "orderly every year twice besides the epistles and gospels" of the Communion Office.

Daily Morning and Evening Prayer.

Besides this rule for daily Divine Service at morning and evening, the rubric before the Litany implies its use upon Sundays, Wednesdays, and Fridays; this rule being more exactly and fully set forth in the 15th canon of 1603, as follows: "The Litany shall be said or sung when and as it is set down in the Book of Common Prayer, by the parsons, vicars, ministers, or curates, in all cathedral, collegiate, parish churches, and chapels, in some convenient place, according to the discretion of the bishop of the diocese, or ecclesiastical ordinary of the place. And that we may speak more particularly, upon Wednesdays and Fridays weekly, though they be not holy-days, the minister, at the accustomed hours of service, shall resort to the church or chapel, and, warning being given to the people by

Litany on Sundays, Wednesdays, and Fridays.

tolling of a bell, shall say the Litany prescribed in the Book of Common Prayer: whereunto we wish every householder dwelling within half a mile of the church to come, or send one at the least of his household, fit to join with the minister in prayers."

Divine Service on Sundays and holy-days.

A similar canon, the 14th, enjoins the performance of Divine Service on Sundays and holy-days, in these words:—"The Common Prayer shall be said or sung distinctly and reverently upon such days as are appointed to be kept holy by the Book of Common Prayer, and their eves, and at convenient and usual times of those days, and in such place of every Church as the bishop of the diocese, or ecclesiastical ordinary of the place, shall think meet for the largeness or straitness of the same, so as the people may be most edified. All ministers likewise shall observe the orders, rites and ceremonies prescribed in the Book of Common Prayer, as well in reading the Holy Scriptures, and saying of Prayers, as in administration of the Sacraments, without either diminishing in regard of preaching, or in any other respect, or adding anything in the matter or form thereof."

Further also, the Act of Uniformity [14 Car. II. ch. 4, § 2] enacts "that the Morning and Evening Prayer therein contained shall, upon every Lord's Day, and upon all other days and occasions, and at the times therein appointed, be openly and solemnly read by all and every minister and curate, in every church, chapel, or other place of public worship within this realm of England, and places aforesaid."

The injunction of Divine Service upon Sundays seems to fall under these laws, and not to be separately provided for. Perhaps this was what Sir John Nicholl meant when he said: "By the general law the Church Service, according to the form prescribed in the Book of Common Prayer, is to be regularly performed every Sunday in the morning and evening." [Bennett *v.* Bonaker, 3 Hagg. Eccl. 25.] In the Pluralities Act a special provision was inserted giving power to the bishop of the diocese, at his discretion "to order that there shall be two full services, each of such services, if the bishop shall so direct, to include a sermon or lecture on every Sunday throughout the year, or any part thereof," in the church of every benefice, and sometimes in all the churches and chapels, if there be more than one, in a benefice. [1 & 2 Vict. ch. 106, § 80.] The same section also confirms a provision of a previous Church Building Act [58 Geo. III., ch. 45, § 65], empowering the bishop to order a third Sunday Service, "being either the Morning or Evening Service of the United Church of England and Ireland," if it appears that there is not otherwise sufficient opportunity for all the parishioners to attend Divine Service when performed twice only.

Divine Service on Sundays.

Morning and Evening.

A third Sunday service, if necessary.

The Act of Uniformity [14 Car. II., ch. 4, § 17], enacts that no other form or order of Divine Service shall be used in any church or chapel than that which is contained in the Book of Common Prayer; except that in the Convocations, the Universities, and in the colleges of West-

Other services than those in the Prayer Book

minster, Eton, and Winchester, the services may be said in Latin. It has sometimes been contended that this enactment only means that no services shall be substituted for the Prayer Book services, but there is no authority for this. In strictness of law, no other services, unless perhaps those ordered for special occasions by the Queen in Council by virtue of the royal prerogative, are legal within consecrated buildings. An argument might be offered, however, and possibly with success, in favour of special services in cathedrals or special chapels on special occasions, such as visitation services, and services on the enthroning or installation of bishops, deans, and other members of cathedral bodies, or the admission of fellows and scholars in colleges.

Moreover, by the Act of Uniformity enforcing the first Prayer Book of Edw. VI. [2 & 3 Edw. VI., ch. 1, § 7], the clauses of which are so far incorporated into the last Act of Uniformity, it is provided "that it shall be lawful for all men, as well in churches, chapels, oratories, or other places, to use openly any psalm or prayer taken out of the Bible at any due time, not letting or omitting thereby the service or any part thereof mentioned in the said booke," —that is, the Prayer Book.

These provisions have been supplemented by the "Act for the Amendment of the Act of Uniformity" [35 & 36 Vict. ch. 35], passed in 1872. By this Act a shortened order for Morning and Evening Prayer is permitted, the Form being given in the Schedule annexed to the Act. Special Forms approved by the Ordinary are also permitted. A Form for a third service on Sundays and Holydays is likewise allowed, if approved by the Ordinary.

With respect to Divine Service in general there is a special canon on the subjects of uncovering the head, kneeling, standing at the Belief, bowing the head at the Name of Jesus, repeating the responses, and remaining in Church during the whole of Divine Service. This is the 18th canon of 1603, and is as follows: "In the time of Divine Service, and of every part thereof, all due reverence is to be used; for it is according to the Apostle's rule, *Let all things be done decently and according to order;* answerably to which decency and order we judge these our directions following: No man shall cover his head in the church or chapel in the time of Divine Service, except he have some infirmity: in which case let him wear a night-cap or coif. All manner of persons then present shall reverently kneel upon their knees, when the general Confession, Litany, and other prayers are read; and shall stand up at the saying of the Belief, according to the rules in that behalf prescribed in the Book of Common Prayer, and likewise when in time of Divine Service the Lord Jesus shall be mentioned, due and lowly reverence shall be done by all persons present, as it hath been accustomed; testifying by these outward ceremonies and gestures their inward humility, Christian resolution, and due acknowledgment that the Lord Jesus Christ, the true eternal Son of God, is the only Saviour of the world, in Whom alone all the mercies, graces, and promises of God to mankind, for this life, and the life to come, are fully and wholly comprised. None, either man, woman, or child, of what calling soever, shall be otherwise at such times busied in the Church, than

Reverence during Divine Service.

in quiet attendance to hear, mark, and understand that which is read, preached, or ministered; saying in their due places audibly with the minister, the Confession, the Lord's Prayer, and the Creed; and making such other answers to the public prayers, as are appointed in the Book of Common Prayer; neither shall they disturb the service or sermon, by walking or talking, or in any other way; nor depart out of the Church during the time of service or sermon, without some urgent or reasonable cause."

It is also provided by the 19th canon that the churchwardens shall not permit "idle persons to abide either in the churchyard or church porch, during the time of Divine Service or preaching; but shall cause them either to come in or to depart."

§ 1. *Morning and Evening Prayer.*

Two directions appear as a preface to the Order for Morning Prayer, headed "The Order for Morning and Evening Prayer daily to be used throughout the year." The first of these is an enactment respecting the place in which these services are to be said; and the second an enactment respecting the "Ornaments of the Church and of the ministers thereof."

Morning and Evening Prayer are to be said or sung in chancel.

The first of these rubrics orders that "the Morning and Evening Prayer shall be used in the accustomed place of the church, chapel, or chancel; except it shall be otherwise determined by the ordinary of the place. And the chancels shall remain as they have done in times past." The "accustomed place" is defined by the first rubric in the "Order for

Matins" of Edw. VI., first Prayer Book: "The priest being in the quire, shall begin with a loud voice. . . ."[1] Reading-desks in the naves of churches were introduced subsequently to this rubric, and a majority of those now in use are of comparatively modern introduction. But that part of the rubric giving discretion to the ordinary to appoint some other place was confirmed by the 14th canon of 1603, "The Common Prayer shall be said or sung distinctly and reverently in such place of every church as the bishop of the diocese or ecclesiastical ordinary of the place shall think meet for the largeness or straitness of the same, so as the people may be most edified;"[2] and reading-desks were doubtless introduced originally into some large churches under this provision.

Unless otherwise appointed by the ordinary.

In the absence of any such determination by the ordinary, the ancient rule of saying Divine Service in the chancel still holds good. In Griffin *v.* Deighton, the Court of Queen's Bench, and the Exchequer Chamber on appeal, (in 1864) decided that the chancel is the place appointed for the clergyman and for those who assist him in the performance of Divine Service; and that for this reason he is always entitled to have access to it and to use it,

[1] Bishop Gibson says, "In the quire, namely in his own seat there, as the way was all Edward VI.'s time, and as is still done in some churches. But in the beginning of Queen Elizabeth, reading-desks began to be set up in the body of the church, and Divine Service to be read there by appointment of the ordinaries, according to the power vested in them by the rubric 5 & 6 Edw. VI."

[2] These words are borrowed from an earlier document, the 'Advertisements' of 1565. See Cardwell's *Docum. Ann.* i. 291.

even though he be not rector. [33 Law Journ. (N.S.) Q. B. 29, 181.]

The second introductory rubric to Morning and Evening Prayer is "And here is to be noted, that such Ornaments of the Church, and of the Ministers thereof, at all Times of their Ministration, shall be retained, and be in use, as were in this Church of England, by the Authority of Parliament, in the Second Year of the Reign of King Edward VI."

With reference to Morning and Evening Prayer there is a distinct direction in the first of "Certain Notes for the more plain explication and decent ministration of things contained in this Book," which is, that "In the saying or singing of Matins and Evensong . . . the minister, in parish churches and chapels annexed to the same, shall use a surplice." This enactment is confirmed in the 58th canon of 1603, which also requires graduates to wear the hoods of their degrees: "Every minister saying the public Prayers, or ministering the Sacrament, or other rites of the Church, shall wear a decent and comely surplice with sleeves, to be provided at the charge of the parish. And if any question arise touching the matter, decency, or comeliness thereof, the same shall be decided by the discretion of the ordinary. Furthermore, such ministers as are graduates shall wear upon their surplices, at such times, such hoods as by the orders of the Universities are agreeable to their degrees, which no minister shall wear (being no graduate) under pain of suspension. *Notwithstanding,* it shall be lawful for such ministers as

Surplice and hood to be worn.

are not graduates to wear upon their surplices, instead of hoods, some decent tippet of black, so it be not silk."[1]

In addition to the surplice and hood the stole was commonly worn at Morning and Evening Prayer, and Litany, but seems not to be mentioned in the first Prayer Book of Edward VI., or in any of the laws on the subject of vestments since the Reformation, and may be considered to be now unlawful. An ancient canon of the Church of England, passed in King Edgar's reign [A.D. 960], decrees that "no priest shall ever come within the church door, or into his stall, without a stole; and that he do not minister at the altar without his vestment." In commenting on a canon of 1279, which orders the use of a surplice and stole for taking the Holy Communion to the sick, Lyndwood says: "Orarium, *i.e.* Stolam, qua sacerdos in omni obsequio Divini uti debet, et suo collo imponitur, ut significet se jugum Domini suscepisse."

Stole worn by custom.

§ 2. *The Litany.*

This service is chiefly a translation from the ancient processional Litany of the Church of England; a portion of which was usually said or sung while the clergy, choir, and congregation were walking round the church or

[1] The surplice is the representative of the Jewish ephod, and is worn by the clergy in some form or other, short, long, wide, or narrow—as the albe, the cotta, the rochet, or the stoicharion—in all parts of the Church; nor is there any probability that it was not so worn in the primitive Church. The same may be said of the stole, orarium, or epitrachelion. Both are distinctly represented in the paintings of the Catacombs. See Marriott's *Vestiarium Christianum*.



churchyard, and the remainder while they were all kneeling in the nave of the church. Its processional use was discontinued at the Reformation, and the custom arose of saying the whole of it as the latter part had previously been said, the priest and his assistants, if any, kneeling at the head of the congregation, in front of the chancel door, or, as the Injunctions of Edward VI. order, "in the midst of the church."

The only direct enactment in the Prayer Book respecting the use of the Litany is that of its prefatory rubric: "Here followeth the Litany or General Supplication to be sung or said after Morning Prayer upon Sundays, Wednesdays, and Fridays; and at other times when it shall be commanded by the ordinary." There has, however, been a continuous tradition of its use in the manner indicated in the preceding paragraph, and this habit is plainly referred to and taken for granted in the rubric before the 51st Psalm in the Commination Service: "Then shall they all kneel upon their knees, and the Priest and Clerks kneeling (in the place where they are accustomed to say the Litany) shall say this psalm, *Miserere mei, Deus.*"

The use of the Litany as a separate and self-contained service is directed with some minuteness of detail in the 15th canon of 1603, which is as follows: "The Litany shall be said or sung when and as it is set down in the Book of Common Prayer, by the parsons, vicars, ministers, or curates, in all cathedral, collegiate, parish churches and chapels, in some convenient place, according to the discretion of the bishop of the diocese, or ecclesiastical



ordinary of the place. And that we may speak more particularly, upon Wednesdays and Fridays weekly, though they be not holy-days, the minister, at the accustomed hours of service, shall resort to the church or chapel, and, warning being given to the people by the tolling of a bell, shall say the Litany prescribed in the Book of Common Prayer: whereunto we wish every householder dwelling within half a mile of the church to come, or send one at least of his household, fit to join with the minister in prayers."[1]

§ 3. *Preaching.*

In the 23rd Article of Religion it is stated as a principle of the Church of England that "it is not lawful for any man to take upon him the office of public preaching before he be lawfully called, and sent to execute the same. And those we ought to judge lawfully called and sent, which be chosen and called to this work by men who have public authority given unto them in the congregation, to call and send ministers into the Lord's vineyard." This principle is illustrated by the words used in the ordination of deacons: "Take thou authority to read the Gospel in the Church of God, and to preach the same,

None to preach but those lawfully appointed to do so.

[1] There is no justification in ecclesiastical law for laymen saying or singing the Litany, as is the practice in some cathedrals, and as was formerly comparatively common. The practice seems to have arisen out of the absurd incapacity of cathedral clergy for doing the duties of their office, which is to "sing" the service. Not being able to sing themselves, they employed lay clerks to do the work of priests, reckless of ecclesiastical propriety and law.



if thou be thereto licensed by the bishop himself:" and also by those used in the ordination of priests: "Take thou authority to preach the Word of God . . . in the congregation, where thou shalt be lawfully appointed thereto." The 49th canon of 1603 also enjoins that "No person whatsoever not examined and approved by the bishop of the diocese, or not licensed, as is aforesaid, for a sufficient or convenient preacher, shall take upon him to expound in his own cure, or elsewhere, any Scripture or matter of doctrine:" and goes on to direct that those not so licensed are to read the homilies "without glossing or adding" instead of preaching sermons of their own.

Much more freedom is now used, and permitted to be used, in the matter of preaching, than at the time when these canons were set forth: but it is clearly the law of the Church of England that none but duly ordained clergy are to preach publicly, and even they only under the authority of the bishop of the diocese. Some bishops have used a "preaching licence," but practically now such a licence if ever required is so only in the case of deacons: except in the case of those clergy who have no fixed duty or office in the diocese. For priests a licence to exercise the office of priesthood, given either as a licence to a curacy, or as institution to a benefice, is held to include the authority to exercise the office of "preaching the Word of God" conferred on him at ordination. The canons of 1603 have many provisions on the subject of preaching, there being at that time a close association between the pulpit and sedition; but most of these provisions are now obsolete.



Chapter V.

HOLY MATRIMONY.

I. Preliminary Precautions against Clandestine Marriage.

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II. Impediments of Marriage.

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III. The Marriage.

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THE estate of matrimony is cognizable by the laws of the Church as a religious institution, and by those of the State as a condition of life involving civil rights and obligations. To some extent these laws overlap each other, and cannot be viewed altogether apart; but it is under its first-named aspect that marriage will be chiefly considered in the present chapter.

From the first beginning of the Christian Church marriages were always inaugurated, among Christians, with ecclesiastical rites. The words of our Lord and His

apostles are of such a character as almost certainly to lead to such a mode of inauguration if it had not previously existed; and as a matter of historical fact there is evidence which shows that the idea of marrying "in the Lord" [1 Corinth. vii. 39] was one that took a strong hold upon the Christian mind. Thus St. Ignatius, a contemporary of St. John, wrote to Polycarp: "It is fitting for those who purpose matrimony to accomplish their union with the sanction of their bishop, that their marriage may be in the Lord, and not merely in the flesh. Let all things be done to the honour of God." [Ignat. *Ep. ad Polycarp.* v.] In the second century Tertullian writes: "How can we find words to describe the happiness of that marriage in which the Church joins together, which the Oblation confirms, the benediction seals, the angels proclaim when sealed, and the Father ratifies!" [Tertull. *ad Uxor.* ii. 9.] The 13th canon of the fourth Council of Carthage [A.D. 398] enjoins that when a bride and bridegroom are presented to a priest for benediction they shall be presented by their parents and friends; an injunction still perpetuated in the giving away of a bride by her father, or by a friend acting as such for the occasion. St. Basil in the same century, writing of the first institution of marriage, calls it a yoke which unites in one those who were two by means of the benediction given [Basil. *Hexam.* vii.]; and St. Ambrose, his contemporary for many years, asks respecting mixed marriages, in his nineteenth epistle, "Since marriage must be sanctified by the priest's sanction and blessing, how

Ecclesiastical ceremonies of marriage indicated in early Christian writings.

can that be called a marriage where there is no agreement of faith?" [Ambr. *Ep.* xix.]

From the fifth century onward elaborate offices for the celebration of marriage are to be found, and the primitive customs of the Church of England in particular are indicated by one of the laws of King Edmund [A.D. 946], "The mass priest shall be at the marriage, and, according to custom, shall celebrate their coming together with God's blessing, with all solemnity." [Spelman, i. 425.] Our modern English "Form of Solemnization of Matrimony" is substantially a translation of the old English "Ordo ad faciendum Sponsalia," and is probably a fair representative of the one which was used when the law just quoted was penned. But in the ancient marriage service the espousals and the marriage were celebrated separately instead of at one time, as is our modern custom; the espousals being a ceremonial ratification *in facie ecclesiæ* of the private engagement between the parties contracting to marry at a future day.

The points to which attention requires chiefly to be directed in considering our existing laws of marriage are (1) the preliminary precautions against clandestine marriages; (2) the impediments of marriage; (3) the circumstances of the marriage ceremony; and (4) the ecclesiastical results of marriage.

I.—PRELIMINARY PRECAUTIONS AGAINST CLANDESTINE MARRIAGE.

The ecclesiastical law of England is very strict in guarding against improper marriages, whether the im-

propriety interferes with the validity of the marriage or not. The general means of thus protecting the rights of parents and others, as well as those of the persons wishing to marry, is the publication of Banns; the exceptional means is the Licence, *i.e.* the dispensation from the necessity of such publication.

§ 1. *Banns.*

It is reasonably supposed, from the manner in which marriage is referred to by the primitive fathers, that some public notice was given to the bishop, or to the assembled Church, equivalent to that now in use; and traces of such a practice have been observed in the French Church of the ninth century. The earliest extant canon of the Church of England on the subject is the eleventh of the Synod of Westminster, A.D. 1200, which enacts that "no marriage shall be contracted without banns thrice published in church" [Johnson's *Canons*, ii. 91]; but this seems only like a canonical enactment of some previously well-known custom. The existing law of the Church of England is very strict on the subject, as may be seen from the rubric and the 62nd canon of 1603. The rubric is as follows: "The Banns of all that are to be married together must be published in the Church three several Sundays, or Holy-days, in the time of Divine Service, immediately before the sentences for the offertory—the curate saying after the accustomed manner, 'I publish the Banns of Marriage between *M.* of and *N.* of . If any of you know cause, or just impediment, why these two persons should not be joined together in holy Matri-

mony, ye are to declare it. This is the first [*second*, or *third*] time of asking.' ¶ And if the persons that are to be married dwell in divers parishes, the Banns must be asked in both Parishes; and the Curate of the one Parish shall not solemnize Matrimony betwixt them, without a certificate of the Banns being thrice asked, from the Curate of the other Parish."[1]

The ancient rubric is confirmed by the 62nd canon of 1603, which is: "No minister, upon pain of suspension *per triennium ipso facto*, shall celebrate matrimony between any persons, without a faculty or licence granted by some of the persons in these our constitutions expressed, except the banns of matrimony have been first published three several Sundays, or holy-days, in the time of Divine Service, in the parish churches and chapels where the said parties dwell, according to the Book of Common Prayer" This is substantially the same as two canons of the Province of Canterbury, passed in the years 1322 and 1328, the latter of which also enjoined that the law should often be declared to the people, so that clandestine marriages might be prevented.

The canon law on this subject is confirmed by the statute law. This enacts [4 Geo. IV., ch. 76, § 2] that "all banns of matrimony shall be published in an audible manner in the parish church, or in some public chapel, in which chapel banns of matrimony may now be or may hereafter be lawfully published, of or belonging to such

[1] This rubric and form are those of the ancient Anglican Office, and the form of certificate then in use is printed in Maskell's *Monumenta Ritualia*, iii. 376.

parish or chapelry wherein the persons to be married shall dwell, according to the form of words prescribed by the rubric prefixed to the Office of Matrimony in the Book of Common Prayer, upon three Sundays preceding the solemnization of marriage, during the time of morning service, or of evening service (if there shall be no morning service in such church or chapel upon the Sunday upon which such banns shall be so published), immediately after the second lesson; and whensoever it shall happen that the persons to be married shall dwell in divers parishes or chapelries, the banns shall in like manner be published in the church, or in any such chapel as aforesaid, belonging to such parish or chapelry wherein each of the said persons shall dwell; and that all other the rules prescribed by the said rubrick concerning the publication of banns and the solemnization of matrimony, and not hereby altered, shall be duly observed." As "Sundays" only are named in this Act, it may be doubted whether the "holy-days" named in the rubric would now suffice for a legal publication. But even if they did the ancient canon of 1322 distinctly ordered that the festivals should be "distant from each other."

Notice of seven days before publication.

By the 7th clause of the same Act [4 Geo. IV., ch. 76] it is enacted that "no parson, vicar, minister, or curate shall be obliged to publish the banns of matrimony between any persons whatsoever unless the persons to be married shall, seven days at the least before the time required for the first publication of such banns respectively, deliver or cause to be delivered to such parson, vicar, minister, or curate, a

notice in writing, dated on the day on which the same shall be so delivered, of their true Christian names and surnames, and of the house or houses of their respective abodes within such parish or chapelry as aforesaid, and of the time during which they have dwelt, inhabited, or lodged in such house or houses respectively.

This clause does not lay the clergyman under any obligation to require seven days' notice, nor is there any judicial decision to guide him as to the exact amount of responsibility which he incurs under it. But in one case Lord Eldon defined the due publication of banns as a publication "by persons having, to the best of their power, informed themselves that they publish banns between persons resident in the parish" [Priestly *v.* Lamb, 6 Ves. 423], and expressed his opinion that clergymen not thus informing themselves incurred the penalty imposed by the canon law. In another case the same Lord Chancellor made the following strong remarks on the subject: "With regard to the clergyman, a notion seems to prevail, that everything is correct, if a paper describing the parties between whom banns are to be published, being handed up to the clergyman in the usual manner during the service, he publishes them without more. It is true that a marriage by banns is good, though neither of the parties was resident in the parish; but if a clergyman, not using due diligence, marries persons neither of whom is resident in the parish, he is liable at least to ecclesiastical censure, perhaps to other consequences. It has been uniformly said, especially as to marriages in London, that the clergyman cannot possibly ascertain



where the parties are resident; but that is an objection which a Court, before whom the consideration of it may come, cannot hear. The Act of Parliament has given the means of making the inquiry, and if the means provided are not sufficient, it is not a valid excuse to the clergyman who has not used those means, that he could not find out where the parties, or either of them, were resident. If he has used the means given to him and was misled, he is excusable; but he can never excuse himself if no inquiry was made." [Nicholson *v.* Squire, 16 Ves. 261.]

Banns Book.

It is also directed by the Act 4 Geo. IV., ch. 76, § 6, that "the churchwardens and chapelwardens of churches and chapels wherein marriages are solemnized shall provide a proper book of substantial paper, marked and ruled respectively in manner directed, for the register-book of marriages; and the banns shall be published from the said register-book of banns by the officiating minister, and not from loose papers, and after publication shall be signed by the officiating minister, or by some person under his direction."

Time of publication.

Some uncertainty exists as to the part of the service during which the banns of marriage should be published, the rubric and the Act of Parliament seeming to disagree. The late Bishop of Exeter once stated in the House of Lords that about the year 1809 the Delegates of the Press at Oxford caused the rubric to be altered in all the Oxford Prayer Books, so as to make it direct that the banns shall be published after the second lesson at Morning or the second lesson at Evening Prayer, their object being to bring the rubric into agreement with



26 Geo. II. ch. 33, § 1. [Hansard's *Reports*, III. v. 78, p. 21.] But that statute only provided for the publication to take place after the second lesson at Evening Prayer, in the absence of a morning service; and, according to the decision of Baron Alderson, left the rubric untouched. In Reg. *v.* Benson, 1856, Sir Edward Alderson expressed a doubt whether the publication of banns is valid under the Act of Parliament in question, when it has taken place after the second lesson instead of after the Nicene Creed. The law, said the judge, had not altered the injunction of the rubric. As, through the neglect of bishops and clergy in past times, morning service was not always celebrated, "the statute enacted that in such cases the publication should be made in the evening service after the second lesson." The Marriage Act of 1836 [6 & 7 Will. IV., ch. 85] expressly confirms "all the rules prescribed by the rubrick" in its first clause.

On the whole, it is decidedly the better opinion that the rubric and the statute must be so construed as to make the two agree if possible, and that therefore banns should be published after the second lesson only in the evening service, and where there is no morning service.

Certificate of publication.

Where the persons reside in separate parishes, and the banns of one of them are necessarily published in a church other than that in which the marriage is to take place, it will be necessary for the minister of the former church to furnish the minister of the latter with a certificate of publication. No such certificate is set forth in the canon or statute law, but the following is a convenient and sufficient form[1]:—

[1] This certificate does not require a stamp.

"I hereby certify that the banns of marriage between *John Smith, bachelor, of the parish of Wexbridge, in the county of Somerset, and Mary Jones, widow, in the parish of Ankerton, in the same county,* were duly published in the parish church of *Wexbridge* on three several Sundays, *viz.*, November 5th, 12th, and 19th, 1871, and no objection was declared.

"EDWARD JOHNSON,

"*Rector of Wexbridge.*"

"*November* 21*st*, 1871."

Limitation of time for banns to be in force.

Banns of marriage, however duly published, are of force only for three months from the date of the latest publication. [4 Geo. IV. ch. 76, § 9.]

§ 2. *Episcopal Marriage Licences.*

The so called marriage "licence" is a dispensation from the bishop, which supersedes the necessity of publication of banns. Such dispensations have been granted by English bishops at least since the fourteenth century, and the power of granting them was confirmed by 25 Hen. VIII. ch. 21. The mode of granting them is regulated by the 101st, 102nd, 103rd, and 104th canons of 1603, and by the Marriage Act so often referred to, 4 Geo. IV., ch. 76. The 20th clause of that Act saves the right of the Archbishop of Canterbury to grant "special licences to marry at any convenient time or place," as given in the Act of Henry VIII. But other licences must state where the marriage is to take place, and must limit the hours during which it is to be celebrated. They hold

good, like banns, for three months, and no longer. [4 Geo. IV. ch. 76, § xix.]

The following is the form in which marriage licences are granted by a bishop, and it will show the nature of the privilege granted, as also its extent and limit. The episcopal seal is attached to them, and they are signed at the foot by the bishop's registrar, or deputy registrar. Before a licence is granted, one of the persons to be married must take an oath before a surrogate that one of them has had his or her "usual place of abode" for fifteen days then preceding in the parish of the Church where the marriage is to take place. Surrogates are generally beneficed clergymen, one clergyman usually acting as surrogate for several parishes.

"The Right Honourable —— Master of Arts, and one of Her Majesty's Counsel learned in the Law, Vicar General, and Official Principal, lawfully constituted of the Right Reverend Father in God, by Divine Providence, —— Lord Bishop of Durham: To our well-beloved in Christ, *Samuel Jones, of Darlington, in the county and diocese of Durham, and Mary Smith, of Barnard Castle, in the county and diocese aforesaid,*

"GREETING.—WHEREAS Oath hath been made, that you the said *Samuel Jones*, being upwards of the age of *twenty-one* years, and a *bachelor*, and the said *Mary Smith* being upwards of the age of *twenty-one* years, and a *spinster*, by and with the consent of those whose consent is required by law in that behalf, do intend to proceed to the solemnization of true, pure,



and lawful matrimony: and have prayed our licence to be married in the church of Barnard Castle aforesaid. We, therefore, willing that such your honest intentions may the more speedily attain their due effect, for certain just causes, us thereunto moving, do by these presents grant our Faculty and Licence, as well to you the parties contracting, as to the Minister of the church of Barnard Castle aforesaid, and to all others who shall be then and there present, that without publication or proclamation of Banns, you may warrantably and freely cause the said marriage to be solemnized by the Minister aforesaid, according to the Form of Solemnization of Matrimony prescribed by the Book of Common Prayer, and Administration of the Sacraments, and other rites and ceremonies of the Church, according to the use of the Church of England, established by Act of Parliament: PROVIDED, that there shall appear no impediment of kindred or of alliance, or any other lawful cause, nor any suit commenced in any Ecclesiastical Court, to bar or hinder the proceeding of the said matrimony, according to the tenor of this Licence; and that the said marriage be so solemnized in the face of the congregation in the church of Barnard Castle aforesaid, between the hours of eight and twelve in the forenoon. And PROVIDED ALWAYS, that if any fraud hereafter appear, either by reason of the truth suppressed, or falsehood suggested, at the time of obtaining this Licence, that the said Licence *be void to* all intents and purposes in law, as if the



same had never been granted; and in that case we enjoin all ministers, if any of the premises shall become known unto them, that they proceed not in anywise to solemnize the said marriage, without having first consulted us touching the same. Given under the Seal of the Consistory Court of Durham, which in this behalf we use, this eighteenth day of the month of November, and in the year of Our Lord One thousand eight hundred and seventy-two."

Any clergyman who marries persons without banns or licence (unless by special licence) is liable to transportation for fourteen years, such celebration of marriage being a felony: and if both the persons so married have wilfully and knowingly acquiesced in the act, their marriage is "null and void to all intents and purposes whatsoever." [4 Geo. IV. ch. 76, §§ 21, 22.] But it has been ruled by the Divorce Court that in a case where the woman had not "knowingly and wilfully" been married before the licence was granted her marriage was valid. [Greaves *v.* Greaves, May 24th, 1872.]

It is also felony, punishable with a like term of transportation, for any person falsely pretending to be in Holy Orders to solemnize marriage according to the rites of the Church of England, and the pretended marriage is, in that case too, null and void. [*Ibid.*] The prosecution for felony must be begun within three years from the date of the offence. It should be clearly understood that in all cases where there has been some defect in the formalities, the marriage is not void unless the parties knew the defect

and acted wilfully. So it was in the old law: banns or licence were required, and the clergyman who married without these, and the parties to be married, were alike liable to ecclesiastical censures, and in some cases to punishment by the Court of Chancery; but the marriage was, nevertheless, a good one.

§ 3. *Registrar's Licences.*

By recent Acts of Parliament, marriage licences may also be issued by the Registrars of Marriages; and under the authority of these marriages can take place, without any religious ceremony at the registrar's office, or with religious ceremonies in Dissenting chapels, and in churches or chapels of the Church of England. But such marriages cannot be celebrated in any church or chapel of the Church of England without the consent of the minister thereof, nor in such latter case by any other than a duly-qualified clergyman of the said Church, or with any other forms or ceremonies than those of the said Church, any statute or statutes to the contrary notwithstanding. [19 & 20 Vict. ch. 119, § 11.]

Provision is also made, by the 12th clause of the same Act, for the solemnization of holy matrimony in the church, even after a civil marriage has been effected under the authority of the registrar. In such a case neither banns nor licence are required, but only the certificate of marriage before the registrar: "If the parties to any marriage contracted at the registry office of any district conformably to the said recited Acts or any of them, or to the provisions of this Act, shall desire



to add the religious ceremony ordained or used by the church or persuasion of which such parties shall be members to the marriage so contracted, it shall be competent for them to present themselves for that purpose to a clergyman or minister of the church or persuasion of which such parties shall be members, having given notice to such clergyman or minister of their intention so to do; and such clergyman or minister, upon the production of their certificate of marriage before the superintendent-registrar, and upon the payment of the customary fees (if any), may, if he shall see fit, in the church or chapel whereof he is the regular minister, by himself, or by some minister nominated by him, read or celebrate the Marriage Service of the persuasion to which such minister shall belong: provided always, that no minister of religion who is not in Holy Orders of the United Church of England and Ireland shall under the provisions of this Act officiate in any church or chapel of the United Church of England and Ireland; but nothing in the reading or celebration of such service shall be held to supersede or invalidate any marriage so previously contracted, nor shall such reading or celebration be entered as a marriage among the marriages in the parish register; provided also, that at no marriage solemnized at the registry office of any district shall any religious service be used at such registry office." This provision for ecclesiastical marriages after civil marriages does not seem to make any restriction as to place or time, the registrar's certificate being supposed to be given only after proper precaution has been taken that the marriage is not of a clandestine

character, and the licence which preceded the civil marriage being also a "licence from a person having authority to grant the same." There is no reason to think, however, that the ceremonial rules as to the place and hours of marriage are superseded by it, though the penal character of the rules may possibly be so.

It is to be observed that marriages with religious ceremonies performed by Dissenting ministers are not legal on account of those religious ceremonies, as those of the Church of England are—but on account of the presence of the registrar and the registration of the marriages by him, or the licence from the registrar to marry in the chapel. There is nothing whatever, therefore, in such a marriage, that will legally interfere with the subsequent celebration of the marriage according to the customs of the Church, except such rules as apply to marriages before the registrar.

II.—IMPEDIMENTS OF MARRIAGE.

In the pre-Reformation days there were many hindrances to marriage—such as pre-contract (or formal espousals),[1] the spiritual relationship of godparent and godchild, and the reception of Holy Orders, in addition to those which are at present accounted as such. Now, since 4 Geo. IV. ch. 76, an existing marriage, incompetency of mind through idiotcy or madness, incompetency of age (as when a boy candidate for marriage is under fourteen years of age, or a girl under twelve), the expressed dissent of

[1] This lingered on till 26 Geo. II. c. 33, § 13.



parents or guardians where either of the parties is under twenty-one years of age, together with certain "forbidden degrees" of consanguinity and affinity, are the only impediments of marriage in usual cases. The cases which require special notice are those of minors, and of the forbidden degrees.

§ 1. *Minority.*

In the case of minors, it has been expressly enacted in the 100th canon, and by statute, that where both or either of the parties between whom the banns are published are under the age of twenty-one years, and the parents or guardians of such parties openly and publicly declare, or cause to be declared, in the church or chapel where the banns are published, at the time of such publication, his, her, or their dissent to such marriage, such publication of banns shall be void [4 Geo. IV. ch. 76, § 8]; but even if the banns were not forbidden, and the clergyman nevertheless had notice of the dissent of such parents or guardians before the marriage, he would be punishable, under the canon law, if he performed the ceremony.

In the case of minors, parents and those "in loco parentis" may forbid banns.

Clergyman having notice of dissent of parents not to marry minors.

The law formerly (as expressed in the 62nd canon) ran, that no such minors could be married without the consent of their parents or guardians, expressed either by themselves, or by sufficient testimony; but the statute just quoted declares, in effect, that this expressed consent is no longer necessary, and consequently its absence does

not make the marriage of minors a punishable offence in the clergyman who marries them.

It is, however, a very serious offence for any clergyman to solemnize a marriage between two persons of whom one is a ward in Chancery, without the leave of the court; and ignorance of the fact would not prevent him from being committed for contempt of court. [Herbert's Case, 3 P. Wms. 116.]

§ 2. *Forbidden Degrees.*

The restrictions which forbid the marriage of relatives within certain degrees of consanguinity (or blood-relationship), and of affinity (or relationship by marriage), are founded on those laid down in the Jewish law by the Divine and Supreme Lawgiver Himself. [Levit. xviii.] The extent to which these restrictions were carried out in the Church of England before the Reformation was regulated by the canon law: since that time it has been defined by statute law, and by the 99th canon of 1603.

Up to the thirteenth century intermarriage was forbidden between persons connected with each other by ties either of consanguinity or affinity to the *seventh* degree.[1] This prohibition of the foreign canon law was adopted by the English Church, apparently, very shortly after the Conquest. In the Council of London [A.D. 1075], held under the presidency of Lanfranc, we find a canon promulgated to this effect, and a similar enactment in the Council of Westminster, held A.D. 1102. But at the Fourth

[1] *Decret.* pars ii. caus. 35, quæst. i.–v. *Corp. Jur. Canon.* Ed. 1687, a canon of Gregory the Great.



Lateran Council [A.D. 1215] the restriction was relaxed, and marriage was forbidden only in cases where the contracting parties were connected in or within the fourth degree. The prohibition, as thus modified, became, probably shortly afterwards, the generally received law of the English Church. We find a canon to this effect in the Sarum Constitutions of 1217, held under Bishop Poore; in the Durham Constitutions of 1220; and in another set of Constitutions of the year 1237, distinguished in Spelman by the title of "Anonymous." The general acceptance by the Church of England of this alteration in the law is also testified by the dispensations granted for English marriages in times subsequent to this date. We find none sought for or obtained by English subjects for any marriage between persons more distantly connected than in the fourth degree, though many were required for persons connected *in* this degree.[1] This seems to point to the conclusion that beyond that limit marriages were legal. Again, an Act of Henry VIII. [25 Hen. VIII. ch. 22], placing all prohibitions of this nature on a statutory footing, recites the then existing restrictions of the canon law as extending only to the fourth degree—that is, the relationship of first-cousins.

The law on this subject remained in this condition until the re-establishment of the Royal Supremacy under Henry VIII. An Act [25 Hen. VIII. ch. 22] was then passed, prohibiting marriages between persons within certain degrees of relationship therein specified by name; and a subsequent Act [28 Hen. VIII. ch. 7], repealing the

[1] Stephens's *Eccl. Stat.* i. 271.



former act, contained similar prohibitions, with a like specification of the forbidden degrees. This Act passed through the same vicissitudes as did all others of a similar tendency during the succeeding reigns, being repealed under Philip and Mary, and revived as to part of its enactments under Elizabeth. There has been considerable difference of opinion as to whether either—and, if either, which—of these statutes of Henry VIII. continued afterwards (on this point at least) in force:[1] but the question is only of importance so far as it affects the decision of a point which has since been frequently litigated—the legality of marriage with a deceased wife's sister. By the 32 Hen. VIII. ch. 38 (the portion of which relating to this subject was confirmed by 2 & 3 Ed. VI. ch. 23, and, after its repeal under Philip & Mary, was revived by 1 Eliz. ch. 1, § 3), all marriages are prohibited between persons not "*without the Levitical degrees.*"

The peculiar form of this enactment is to be observed, indicating, as it does, the probable intention of the Legislature to give the statute a wider disabling operation than merely in restraint of marriages within the *express Levitical prohibitions.* To carry out this intention, lawyers have been guided by two rules in the interpretation of this Act. [1] The word "degrees" must not be considered as referring to *steps* of *vertical* relationship; and

[1] Gibson considers 25 Hen. VIII. ch. 22 as repealed, but Hawkins inserts it in his *Statutes* as unrepealed. Gibson also thinks [*Cod. Eccl.* ad loc.] 28 Hen. VIII. ch. 7, § 9 repealed; but Vaughan, C.J., in Harrison *v.* Burwell, argues from it as unrepealed: Sir R. Phillimore, *Eccl. Law*, 723, 724.

thus the Levitical prohibition of marriage between *parent* and *child*, extends to all marriages between persons in the ascending and descending line *ad infinitum* (*e.g. grandparent* and *grandchild*, &c.), as being persons within the same *degree*. [2] The express Levitical prohibition of marriage between persons connected by a certain degree of relationship is to be extended to all marriages which are *in paritate rationis: e.g.*, marriage being expressly forbidden between a woman and her husband's brother, it is also forbidden, by implication, between a man and his wife's sister, as being within the same degree of relationship as a marriage between the former parties. Agreeably to this principle, a table of forbidden degrees was promulgated in 1563 by Archbishop Parker, which contained several prohibitions not expressly insisted on in Lev. xviii., but capable of being deduced from the Levitical prohibitions by the application of the above-stated rules of interpretation. This table is adopted in the 99th canon of the year 1603, which is as follows: "No person shall marry within the degrees prohibited by the laws of God, and expressed in a table set forth by authority in the year of our Lord God 1563. And all marriages so made and contracted shall be adjudged incestuous and unlawful, and consequently shall be dissolved as void from the beginning, and the parties so married shall by course of law be separated. And the aforesaid table shall be in every church publicly set up and fixed at the charge of the parish." The table itself is constructed in rather a cumbrous manner, but the following is a faithful interpretation of its enactments:—

1. *Relatives whom a Man may not Marry.*

Mother, or Stepmother	of his own or his wife's parents.
Widow of	his father, or father-in-law. „ uncle. „ brother. „ son, or stepson. „ nephew.
Aunt Sister Daughter, or Niece	of himself or his wife.
Daughter, or Stepdaughter	of his own or his wife's children.

2. *Relatives whom a Woman may not Marry.*

Father, or Stepfather	of her own, or of her husband's parents.
Widower of	her mother, or mother-in-law. „ aunt. „ sister. „ daughter, or stepdaughter. „ niece.
Uncle Brother Son, or Nephew	of herself or her husband.
Son, or Stepson	of her own, or of her husband's children.

These prohibitions are founded upon the two principles —that (1) the relationships forbidden by God in the case of either sex are equally forbidden to the other sex; and that (2), the husband and wife being one flesh, relationships by marriage become, to either of them, blood-relationships.[1]

[1] It used to be held, moreover, that illicit alliances in the same degrees entail the same prohibitions; so that, for example, a man



The course of subsequent legal decision has constantly affirmed these principles of interpretation—not only positively, but annulling all marriages which are impliedly forbidden, *paritate rationis*, by the Levitical law, but negatively, by refusing to interfere with any marriage which could not be brought within the analogy of the Levitical prohibitions. Thus in Hill *v.* Good,[1] Vaughan, C.J., makes it the main ground of his adjudging void a marriage with a deceased wife's sister, that its unlawfulness was implied in the prohibition against a woman marrying her husband's brother. And in Wortley *v.* Watkinson, a marriage with a wife's sister's daughter was set aside, as being within the same degrees as a marriage with a father's brother's wife.[2] But Harrison *v.* Burwell[3] is an instance of the opposite operation of this principle of interpretation. There a prohibition issued against the impeachment in the spiritual courts of the marriage of a man with the widow of his great-uncle, such a marriage being held not to be within the Levitical degrees.

As regards the status of persons who have married

is no more permitted to marry the paramour of his deceased brother, than he is permitted to marry his deceased brother's lawful widow. But it was decided in the case of Taylor *v.* Wing [2 Swabey and Tristram's Rep.; 30 Law Jour. Mat. Rep. 258], in the year 1861, that this rule is not part of the law of England. It is, however, still a rule of the canonists.

[1] Vaughan, 314; Stephens's *Laws of the Clergy*, i. 714. See also Bishop Jewell's Letter, *Strype's Parker*, App. No. 19.

[2] 2 Levinz, 254.

[3] Vaughan, 242; and see the elaborate judgment of Vaughan, C.J., in this case, and Hill *v.* Good, for a complete exposition of the law on the subject.

within the forbidden degrees, an important alteration has been effected by a statute passed within the present century. Previously to this enactment, marriages of this kind were not void, but merely what is called *voidable;* that is to say, they might by impeachment in the ecclesiastical courts, and on proof of their illegality, be annulled and rendered void *ab initio*, and the issue of such marriages bastardized. These proceedings might be taken at any time during the lifetime of the offending parties; but after their death, or the death of one of them, the common law forbade such marriages being impeached in the spiritual courts for the purpose of bastardizing the issue; and prohibitions to that effect were in such cases sought for and obtained from the common law courts. But by 5 & 6 Will. IV. ch. 54, all marriages within the forbidden degrees, whether of *affinity* or *consanguinity*, were rendered absolutely and *ab initio* void *for the future.* With regard to *past* marriages, however, a distinction was made. Those which previously to the passing of the Act had been entered into between persons within the forbidden degrees of *consanguinity*, and so were *voidable*, were suffered to remain *in statu quo—i.e.* in the position of marriages valid until set aside by impeachment in the ecclesiastical courts. But those which at the passing of the Act were voidable merely on the ground of *affinity*, were (provided no proceedings were pending for their impeachment) thereby rendered absolutely good and valid in law, and unassailable in any court. This Act regulates the legal status of all marriages within the forbidden degrees at the present day.



III.—THE MARRIAGE.

It is only in the case of marriage by "special licence" that a perfect freedom of choice is permitted as to the time and place of its celebration. In the case of marriage by banns, and by an ordinary licence, there are certain restrictions imposed by both the canon and statute law.

§ 1. *Place of Ceremony.*

A restriction as to place is implied in the first two rubrics of the Marriage Service, where, in the first, "the church" in which the banns are published, and in the second rubric one of the two in which they have been severally published, is spoken of as that in which the marriage is to be celebrated. The 62nd canon is more express, for, after forbidding marriage without banns or licence, it adds: "Neither shall any minister, upon the like pain"—*i.e.* "of suspension *per triennium ipso facto*" —"under any pretence whatever join any persons, so licensed, in marriage in any private place, but either in the said churches or chapels where one of them dwelleth." This provision is confirmed by the Marriage Act [A.D. 1823], which enacts, "that in all cases where banns shall have been published, the marriage shall be solemnized in one of the parish churches or chapels where such banns shall have been published, and in no other place whatsoever." [4 Geo. IV. ch. 76, § 2.] By the 21st clause of the same Act, celebration in any other place than that in which the banns have been published, or that which is named in the licence, entails, on the clergyman celebrating it, the guilt of felony, and the punishment of

fourteen years' transportation—"provided that all prosecutions for such felony shall be commenced within the space of three years after the offence committed;" while the marriage itself "shall be null and void to all intents and purposes whatsoever," if the persons so marrying have knowingly and wilfully acquiesced in such a breach of the law. During the time that any Church is under repair, the publication of Banns and solemnization of Marriage may take place in the Church of an adjoining Parish, or in any place licensed by the Bishop [4 Geo. IV. ch. 76, § 13]: or in any consecrated Chapel authorized by the Bishop [11 Geo. IV. & 1 Will. IV. ch. 18, § 2].

§ 2. *Time of Marriage.*

The canon and statute law both strictly require that all marriages (except those solemnized by special licence) shall be celebrated between eight and twelve o'clock in the morning. Thus the 62nd canon of 1603 enacts: "Neither shall any minister, upon the like pain"—*i.e.*, of three years' suspension—"under any pretence whatsoever, join any persons so licensed in marriage at any unseasonable times, but only between the hours of eight and twelve in the forenoon." This is confirmed by the Marriage Act of 1823, with the additional civil punishment of fourteen years' transportation imposed upon the clergyman transgressing. [4 Geo. IV. ch. 76, § 21.] The 62nd canon also requires the marriage to be celebrated "in time of Divine Service;" but this practice has become very unusual.[1]

[1] The limitation of the hours during which the celebration of

In addition to this strict limitation in respect to the hours of the day, there are also, by the custom of the Church, limitations as to the time of the ecclesiastical year when marriages may be solemnized.

This restriction as to "canonical seasons" arose from the most solemn periods of the Christian year having been ever considered as inappropriate for the celebration of the joys of marriage, and is of very early date. The most ancient instance is found in the 57th canon of the Council of Laodicea [A.D. 365], which forbids the celebration of marriage during Lent. A doubtful canon of the Council of Lerida [A.D. 524] is quoted, forbidding their solemnization not only in Lent, but also from the beginning of Advent to Epiphany, and during the three weeks preceding the Festival of St. John the Baptist. The 18th canon of the Council of Eanham [A.D. 1009], and the 3rd canon of the Council of Selingstadt [A.D. 1022], enacted that no marriage should take place from Advent to the

marriages may take place is partly to ensure publicity. So, in 1502, a priest was presented to the archdeacon for marrying a man and woman "in horâ secunda post mediam noctem, januis clausis;" and in 1578 another was presented for marrying in the afternoon. [Hale's *Precedents*, 247, 507.] But it is conjectured, with some reason, that the practice of morning marriages necessarily arose from the Office being followed by the Holy Communion. It is some confirmation of this, that the wedding-breakfast is always eaten after the marriage, as if in obedience to the rule of not breaking the night's fast before Communion. It may also be noticed, that the canon enjoining solemnization of marriage "during Divine Service" seems to point to the Holy Communion (which is frequently distinguished as the special "Divine Service" of the Church) as part of the ceremony.

sixth day after Epiphany, nor between Septuagesima and the Octave of Easter, nor in the fourteen days before the Festival of St. John the Baptist, nor upon fast-days, nor upon the vigils of solemn feasts. The 19th canon of the Council of Ravenna [A.D. 1311] is to the same effect; and so also is the 49th canon of the Church of Ireland [A.D. 1632], which is the same with the 102nd canon of 1603, except that it has this addition at the end: "Neither in the time of Lent, nor of any public fast, nor of the solemn festivities of the Nativity, Resurrection, and Ascension of Our Lord, or of the Descension of the Holy Ghost."

The practice of the Church of England before the Reformation is shown by the rubric of the Sarum Manual, which prohibits marriages from Advent Sunday until the Octave of Epiphany, from Septuagesima until the Octave of Easter, and from Rogation Sunday until six days after Pentecost. That this rule was observed equally as much after the Reformation as before, in many places, is shown by the fact that an entry of the prohibited times was often made in the parish register, and that inquiries on the subject are found in many visitation articles. A Latin notice of this kind appears in the register-book of Dymchurch, in Kent, dated 1630; a rhyming English one, of the same tenour, in that of St. Mary, Beverley, dated November 25th, 1641. In that of Wimbish, in Essex, there is one dated 1666, of which the following is a copy:—

"The times when Marriages are not usually solemnized:

From { Advent Sunday / Septuagesima Sunday / Rogation Sunday } until { eight dayes after Epiphany. / eight dayes after Easter. / Trinity Sunday."

A similar entry appears in the register-books of South Bemfleet, in Essex, and of Hornby, in Yorkshire; and Sharpe, Archbishop of York, in a Charge of 1750, names the prohibited times as then observed. They will sometimes also be found mentioned in old almanacks, as if the practice still continued during the last century. Although there is no modern canon of the Church of England respecting these prohibited times, the consentient testimony of these various centuries will have great weight with those who would supply, by a voluntary obedience, the absence of a compulsory law, when the mind of the Church appears to be plain and clear.

§ 3. *Obligation of the Clergyman to Solemnize the Marriage.*

It has never been quite strictly determined whether or not the clergyman, whose duty it would ordinarily be to marry any two persons, is liable to an action of damages for not doing so. Lord Denman, however, said, in a case of an action for such refusal which came before him, that he was not prepared to say that an action for damages "might not be maintained on a declaration raising a proper complaint of a public officer publicly neglecting his public duty, to the temporal and, it might be, the very great damage, of an individual. Such a neglect of the duty of a clergyman may be actionable, if it be malicious, and without probable cause." [Davis *v.* Black, 1 Queen's Bench, 900.] There is, however, little doubt that a clergyman so refusing could be proceeded against and punished in the ecclesiastical courts. And it is

possible that a mandamus could be procured from the Court of Queen's Bench to order him to perform the ceremony. But almost the only case likely to arise is that where one or both of the parties requiring to be married have been divorced from a husband or wife who is still living at the time of the demand. The Divorce Act allows a clergyman in this case to refuse to marry, but provides that if he shall so refuse, he shall permit any other clergyman, entitled to officiate in the same diocese, to perform the ceremony in his church. [20 & 21 Vict. ch. 75, §§ 57, 58.]

Upon the whole, it may be considered as probable that a reasonable refusal on the part of a clergyman would be respected by a court of law, but that an ill-considered or contentious refusal would subject him to punishment—either by recovery of damages in a civil court, or by suspension, in an ecclesiastical court, under the Church Discipline Act.

§ 4. *The Form of Solemnization.*

The details of the ceremony belong, in general, rather to the province of ritual than of ecclesiastical law, but some of them are not without importance as regards the latter.

In the face of witnesses.

It is essential that the ceremony should be performed *in facie ecclesiæ*. The old rule of the canons is (as has been already mentioned) that this object shall be accomplished by marrying during the time of Divine Service. The rubric speaks of the persons to be married coming to church for that purpose

"with their friends and neighbours." The Marriage Act [4 Geo. IV., ch. 76, § 28] requires, as a minimum of publicity, that "all marriages shall be solemnized in the presence of two or more credible witnesses, besides the minister who shall celebrate the same." Although the statute does not order that these shall be "friends and neighbours" of the persons to be married, it is plain that the attendance of some of these as witnesses is much more in accordance with the law of the Church than the *pro formâ* impressment of the clerk and sexton, for the mere purpose of satisfying the *minimum* requirement of the Act of Parliament.

The "body of the Church" is defined by the rubric as the place in which the marriage ceremony is to begin. This clearly means some portion of the nave, and is a modern rendering of the ancient *ante ostium ecclesiæ*, or (as in the case of baptism) *ad valvas ecclesiæ*, the porch being anciently used for several rites.[1] **Place of celebration.**

> "She was a worthy woman all hire live.
> Housbondes at the chirche dore she had five."
> Chaucer's *Wife of Bath*, Prol. 461.

The "change of place" was objected to by the Puritans at the Savoy Conference; but the practice was justified by the bishops, apparently on the ground that only that part

[1] Printed copies of the Prohibited Degrees are occasionally found, having at the head a woodcut of the espousals being celebrated in the nave. They are "sold by T. Wilkins, 23 Aldermanbury," and appear to belong to the end of the last century. But the custom has been handed down in some churches with unbroken tradition.

of the marriage ceremony ought properly to be celebrated at the altar which is associated with the Holy Communion: "They go to the Lord's Table because the Communion is to follow." [Cardw. *Conf.* 360.]

Modern custom interprets this rubric as referring to the door or entrance-step of the chancel, but any convenient portion of the nave equally satisfies the direction given as to the first portion of the service. The rubric subsequently provides for an orderly procession thence to the altar: "Then the minister or clerks, going to the Lord's Table, shall say or sing this psalm following," after which "the man and woman kneeling before the Lord's Table," the rest of the service follows.

Allegation of impediments.

Before the espousals begin—that is, before the mutual consent of the persons to be married is declared by them—words are to be used by the priest which are equivalent to a fourth publication of banns: "Therefore, if any man can show any just cause or impediment why they may not lawfully be joined together, let him now speak, or else hereafter for ever hold his peace,"—a similar exhortation being given to the persons to be married. The rubric then enacts that, "if any man do allege and declare any impediment, why they may not be coupled together in matrimony, by God's law, or the laws of this realm; and will be bound, and sufficient sureties with him, to the parties; or else put in a caution (to the full value of such charges as the persons to be married do thereby sustain) to prove his allegation: then the solemnization must be deferred, until such time as the truth be tried." This rubric, taken from the Latin

Office, seems never to have received a judicial interpretation. On the one hand, it appears to stop the marriage only in case the objector submits to "be bound, and sufficient sureties with him, to the parties; or else put in a caution," &c. On the other, the mere fact of a real impediment alleged by any apparently trustworthy person seems to put it out of the power of the clergyman to proceed with the marriage (whether the objector offers security or not) until a legal investigation has taken place. Impediments have been alleged at this part of the service, and the marriage has been stopped in consequence, without any other formality; but such a proceeding does not seem to meet the requirement of the rubric, nor to be just to the persons desiring to be married.

Mutual consent.

The openly expressed consent of each party to marry the other is a very essential part of the marriage ceremony. Forced marriages have not unfrequently taken place, and although the *viva voce* assent of the man and woman is not a perfect security against them, since the assent itself may be extorted, yet it is the best security that can be taken; and it should always be strictly required by the clergyman, that it be given by each of them in an audible voice.[1] The words

[1] The ceremony of the civil marriage established by 6 & 7 Will. IV. ch. 85, consists of this mutual assent, preceded by a declaration that no impediment exists. It is as follows: "Each of the Parties shall declare, 'I do solemnly declare, That I know not of any lawful impediment, why I *A. B.* may not be joined in matrimony to *C. D.*' And each of the Parties shall say to the other, 'I call upon these Persons here present to witness that I, *A. B.*, do take thee, *C. D.*, to be my lawful wedded Wife [*or* Husband].'"

in the English Marriage Office have been used in the same vernacular form for many ages; and are also found of equally ancient date, in the vernacular, in Continental Offices.

Betrothal.

Then follow the words of betrothal, which are an amplification of the mutual assent, and are also the ancient form. These words complete the espousals, but there is now no division between the two services, and that of the espousals runs on to that of the actual marriage. The marriage itself is legally completed by declaration of the priest: "Forasmuch as *N* and *N*... I pronounce that they be man and wife together . . . ," which is followed by the first benediction.

Marriage Communion.

The remaining portion of the service is intended to be associated with the celebration of the Holy Communion, "the minister or clerks going to the Lord's table," followed by the man and woman (who are then to kneel before it), and saying or singing one of the Psalms as an "Introit." Until the revision of A.D. 1661, a rubric followed the last rubric: "Then shall begin the Communion, and after the Gospel shall be said a sermon, wherein ordinarily (so oft as there is any marriage) the office of a man and wife shall be declared according to Holy Scripture. Or, if there be no sermon, the minister shall read this that followeth." This rubric was replaced by two new ones—the first in similar terms as regards the exhortation, but the second making it optional for the new-married persons to receive the Holy Communion either at the time of their marriage, or at the first opportunity afterwards.

§ 5. *Registration of Marriages.*

The existing law for the registration of marriages is contained in 6 & 7 Will. IV. ch. 86, and 1 Vict. ch. 22. By these Acts it is enacted, "that the Registrar-General shall furnish, or cause to be furnished, to the rector, vicar, or curate of every church and chapel in England wherein marriages may lawfully be solemnized, "duplicate register-books according to the form given in the Act [6 & 7 Will. IV. ch. 86, § 30]—the cost of them to "be paid to the said superintendent-registrar by the . . . churchwardens . . . out of the moneys coming into their hands as such . . . churchwardens." [1 Vict. ch. 22, § 25.] By the 31st clause of the first-quoted Act, the clergyman is required, "immediately after every office of matrimony solemnized by him," to register the marriage in duplicate, according to the form given.

Copies of such registers are to be given to the registrar every January, April, July, and October, certified and signed by the clergyman, who is to receive the sum of six-pence for every such copy, and is liable to a penalty of ten pounds for neglect. [1 Vict. ch. 22, § 27.] As soon as the register-books are full, one of them is to be sent to the registrar, the other remaining in the custody of the rector or vicar, to be kept with the registers of baptisms and burials. [6 & 7 Will. IV. ch. 86, § 33.]

§ 6. *Fees for Marriages.*

By a Constitution of Canterbury of A.D. 1222, it was enjoined that matrimony should not be hindered through

nonpayment of any accustomed fee—a rule which formed part of the law of the Church that no sacrament should be denied for such a cause. The rubric directs that when the man to be married delivers the wedding-ring to the priest, he shall lay upon the book, with it, "the accustomed duty to the priest and clerk." The ancient Latin rubric is, "Deinde ponat vir aurum, argentum, et annulum super scutum vel librum," saying the words, "With this rynge I the wed, and this gold and silver I the geue" Thus the "duty to the priest and clerk" takes the place of the "tokens of espousal," and it is possible that the substitution represents a custom of appropriating the gold and silver as the marriage-fee after it had done its symbolical duty.

A modern decision of the Courts of Queen's Bench and Exchequer Chamber recognised the validity of custom as regards a moderate fee for marriage, but ruled that thirteen shillings is an exorbitant sum. [Bryant *v.* Foot, Law Rep., 2 Queen's Bench, 161; 3 Queen's Bench, 497; 36 Law Journal Rep., Queen's Bench, 63.] Under the Church Building Act [59 Geo. III. ch. 134, § 11], the Ecclesiastical Commissioners may fix a table of fees for any parish with the consent of the vestry and of the bishop, such fees being recoverable. Under the New Parishes Act [6 and 7 Vict. ch. 37, § 15], a similar table may be made by the chancellor of the diocese.

IV.—THE ECCLESIASTICAL RESULTS OF MARRIAGE.

It has been a constant theory of ecclesiastical law, as well as of theology, that marriage celebrated according to

the forms of the Church is ordinarily indissoluble. This theory is founded on the words adopted by Our Lord, "For this cause shall a man leave his father and mother, and cleave to his wife; and they twain shall be one flesh" —to which He adds: "So then they are no more twain, but one flesh. What therefore God hath joined together, let not man put asunder." [Mark x. 7–9.] These latter words are used in the Marriage Office in the sense that "God hath joined together" those who are united by the legitimate use of that office; and thus leave open the possibility of a "putting asunder" by the same authority which effected the union. But the words of the marriage-vow exclude any idea of such putting asunder, being, "I *N.* take thee *N.* to my wedded wife [or husband] . . . till death us do part,"—the previous words of espousal being similar, "so long as ye both shall live."

The idea of divorce, therefore, in the sense of a dissolution of marriage, is not recognised by the Office for Holy Matrimony: and the only way in which it was recognised by ecclesiastical law previous to the Reformation, was in the form of a separation *a mensâ et thoro;* or in the form of what was then, in the days of pre-contracts, a more frequent occurrence—a declaration of the nullity of a marriage, on account of some circumstance which had made it invalid and null from the beginning.

After the Reformation the tendency of the civil courts was to recognise marriage as a civil contract only, and therefore as dissoluble; and new ideas on the subject were so far extending, that had the *Reformatio Legum* come into force, adultery, desertion, and cruelty would

have been declared to be sufficient causes for the total dissolution of marriage.

But the only kind of divorce actually recognised by ecclesiastical law was separation *a mensâ et thoro*, or for annulling pretended matrimony; and in the former case, a special provision was made, by the 107th canon of 1603, against the remarriage of either of the divorced persons. This canon is as follows:—"In all sentences pronounced only for divorce and separation *a thoro et mensâ*, there shall be a caution and restraint inserted in the act of the said sentence, That the parties so separated shall live chastely and continently; neither shall they, during each other's life, contract matrimony with any other person. And, for the better observation of this last clause, the said sentence of divorce shall not be pronounced until the party or parties requiring the same have given good and sufficient caution and security into the court, that they will not any way break or transgress the said restraint or prohibition."

Divorce *a vinculo* is still, therefore, unrecognised by the law of the Church; and the marriage union, when validly effected, is still recognised as lasting throughout the joint life of the persons married.

In the year 1857, Parliament took all questions connected with the validity of marriage and separation *a mensâ et thoro* out of the hands of the Ecclesiastical Courts, erected a new Court for the trial of Matrimonial Causes, and established entire dissolution of marriage, or divorce *a vinculo*, as part of our English Marriage Law. The persons so divorced *a vinculo* are permitted to



marry others during the lifetime of the divorced wife or husband.

It may be questioned, however, whether this legislation took any other view of marriage than that which regards it as a civil contract; and it is certain that it did not in any way affect the terms of the marriage-vow in the Office for Holy Matrimony.

Chapter VI.

THE CHURCHING OF WOMEN.

THE "Thanksgiving of Women after Childbirth, commonly called the Churching of Women," is translated from the ancient Latin Office of the English Church—the "Ordo ad purificandam mulierem post partum, ante ostium Ecclesiæ." The only law respecting it is that of the rubric, and this is very indefinite in its directions.

What women are entitled to the Service.

There is much uncertainty, indeed, whether or not the service is intended for all women who have borne children, or only for those who have borne them in lawful matrimony. Baron Alderson expressed a strong opinion, in the case of Reg. *v.* Benson, in July, 1856, that every woman who has been delivered of a child has a right to be churched, and ought to give thanks to God for her safe deliverance. This right has, however, its limitations, for it has never been the common custom of the Church of England since the Reformation, and probably not before, to admit unmarried women to this privilege without some act declaring their penitence.

In Archbishop Grindal's 'Injunctions for the Province of York,' issued in the year 1571, there is one directing



the clergy: "That they should not church any unmarried woman, which had been gotten with child out of lawful matrimony, except it were upon some Sunday or holy-day; and except either she, before childbed, had done penance, or at her churching did acknowledge her fault before the congregation." [Cardw. *Doc. Ann.* i. 335.] In the same archbishop's 'Articles of Visitation for the Province of Canterbury' [A.D. 1576], there is also the following inquiry: "Whether your parson, vicar, curate, minister, or reader, do church any unmarried woman which hath been gotten with child out of lawful marriage, and say for her the Form of Thanksgiving of Women after Childbirth, except such an unmarried woman have either before her childbirth done due penance for her fault to the satisfaction of the congregation, or at her coming to give thanks do openly acknowledge her fault before the congregation, at the appointment of the minister, according to order prescribed to the said minister by the ordinary or his deputy; the same churching to be had always on some Sunday or holy-day, and upon none other day?" [*Ibid.* 404.] Similar inquiries are also to be found in the visitation articles of most of the dioceses of England down to the time of the Civil War.

At the Savoy Conference, the Puritans gave in, as one of their exceptions to the Churching Service: "It may fall out that a woman may come to give thanks for a child born in adultery or fornication, and therefore we desire that something may be required of her, by way of profession of her humiliation, as well as of her thanksgiving." [Cardw. *Conf.* 334.] To this the bishops replied:

"If the woman be such as is here mentioned, she is to do her penance before she is churched." [*Ibid.* 362.] The Puritans objected, that this involved a formal process in the Ecclesiastical Court, which was not often practicable, "not to one of a multitude; and what shall the minister do with all the rest?" [*Grand Debate between Bishops and Presbyterians*, p. 147.] Nothing, however, was formally enjoined, and since that time the reception or rejection of such women has been left to the judgment of the parish priest.

The woman to be "decently apparelled."

In Archdeacon Hale's *Precedents* there are several presentations of clergymen for refusing to church women who did not wear veils or kerchiefs when they came to their thanksgivings, and of women for coming without them: "The said Tabitha did not come to be churched in a vaile" [p. 259]. "Presentatur, for that she, being admonished that when she came to church to give God thanks for her safe deliverance in childbirth, that she should come with such ornaments as other honest women usually have done, she did not, but coming in her hat, and a quarter about her neck, sat down in her seat, where she could not be descried, nor seen unto what the thanksgiving was read" [p. 237]. In an inventory of church-goods belonging to St. Benet's, Gracechurch, in 1560, there is "a churching-cloth, fringed, white damask," from which it would seem that the veil was in some cases provided by the Church. Elborow speaks of the veil being commonly used in the latter half of the seventeenth century; and Bishop Gibson [*Cod.* xviii. 12] records a case, in which the

judges referred to the Archbishop of Canterbury on the subject, who called together several bishops, and taking their opinion the judges decided that the custom of the Church of England required the veil to be worn. [2 Rolle, *Abridy.* 221.] And even if the use of the veil be considered obsolete, the rubric is still binding as to decency of apparel, and a modest covering for the head must undoubtedly be included under the term.

As the title of the Latin office shows, the ancient place for the churching was the church-door, "*ante ostium ecclesiæ;*" the church-porch being then used for several ceremonies, as at the first part of Baptism and Marriage. In 1549 this was altered to the choir-door; and "nigh unto the table" was directed in 1552. The tenth of Bishop Wren's 'Orders and Injunctions for the Diocese of Norwich,' in 1636, enjoins: "That women to be churched come and kneel at a side near the communion-table without the rail, being veiled according to the custom, and not covered with a hat; or otherwise not to be churched, but presented at the next generals by the minister, or churchwardens, or any of them." In Bishop Brian Duppa's *Articles of Visitation* of 1638, there is a similar one: "Doth he go into the chancel, the woman also repairing thither, kneeling as near the communion-table as may be; and if there be a Communion, doth she communicate, in acknowledgment of the great blessing received by her safe delivery? Doth the woman who is to be churched use the accustomed habit in such cases with a white veil or kerchief upon her head?" The present rubric gives no directions, further than that the

Place for Churching.

woman "shall kneel down in some convenient place as hath been accustomed, or as the ordinary shall direct."

Time of churching.

It is evident that the Churching of Women is intended to be a service *in facie ecclesiæ*, and the concluding rubric directs that "if there be a Communion, it is convenient that she received the Holy Communion." But the celebration of these occasional and personal offices of the Church in the time of Divine Service, at least on Sundays, is probably a much more public form of celebration *in facie ecclesiæ* than was contemplated in ancient times; and a churching in the presence of the priest and a few attendants is quite within the spirit of the law, while it is much more suitable to the circumstances of the woman than a very public ceremony would be.

By a priest only.

It may be observed, in conclusion, that there is no legal justification for the performance of this office by a deacon, a priest being expressly named three times in the rubric.

Chapter VII.

THE VISITATION OF THE SICK.

TWO Offices are provided in the Prayer Book for the use of the clergy in visiting the sick, and there is also a canon on the subject. These cannot be left unnoticed in a work like the present, but it must be observed beforehand, that the pastoral diligence of the clergy in modern days goes far in advance of their legal obligations.

The 67th canon of 1603 directs, that "when any person is dangerously sick in any parish, the minister or curate, having knowledge thereof, shall resort unto him or her (if the disease be not known, or probably suspected to be infectious), to instruct and comfort them in their distress, according to the order of the Communion Book, if he be no preacher; or if he be a preacher, then as he shall think most needful and convenient." The first rubric of the Office for the Visitation of the Sick also directs that, "when any person is sick, notice shall be given thereof to the minister of the parish . . ." In what manner the "knowledge thereof" is to be obtained is in some degree illustrated by a passage in the Ordination Service for Deacons, where it is stated

The clergyman to visit those whom he knows to be sick.

to be part of their duty to search out the sick and poor in the parish in which they are appointed to minister, and to give notice of such cases to the incumbent: "And furthermore it is his office, where provision is so made, to search for the sick, poor, and impotent people of the parish, to intimate their estates, names, and places where they dwell unto the curate, that by his exhortation they may be relieved with the alms of the parishioners and others. Will you do this gladly and willingly?" This question, and the first parenthesis in the canon (which speaks, in general terms, of the knowledge by the minister of a case of sickness, imply that he is expected to do something more than merely visit sick people who send for him. Whether he become acquainted with the case directly or indirectly, he is bound to visit, and even, if circumstances permit, he is to search for, or, at any rate, cause to be sought for, the sick and impotent, and to act up to the spirit of the ancient rules of the Church—"Ut quoties fuerint accersiti, celeriter accedant et hilariter ad ægrotos" [Canon of A.D. 1222; Gibs. *Cod.* xxiii. 1]; and, as the Council of Milan directs, "Etiamsi non vocati invisant."

Cases of infectious disease.

Two rubrics at the end of the Office for the Communion of the Sick, and a part of the 67th canon, indicate that the clergyman is supposed (though not absolutely required) to face the danger of infection, while, at the same time, he is required to minimize the danger as regards both himself and others. The canon directs the minister to resort to any sick person "(if the disease be not known, or probably

suspected to be infectious)," and the parenthesis appears to have been inserted for the purpose of leaving the minister to his own conscience in the excepted cases. But the rubric takes a stricter line, stating that "in the time of the plague, sweat, or such other like contagious times of sickness or diseases, when none of the parish or neighbours can be gotten to communicate with the sick in their houses, for fear of the infection, upon special request of the diseased, the minister may only communicate with him;" and this plainly supposes it to be the clergyman's duty to go into danger on some occasions, when all other persons have fled from it. But a previous rubric also enjoins that "at the time of the distribution of the Holy Sacrament, the priest shall first receive the Communion himself, and after minister unto them that are appointed to communicate with the sick, and, last of all, to the sick person;" and this appears to be a provision against contagion at least, in the case of the healthy communicants, there being no other reason why the sick person should not communicate immediately after the priest.

Nature of the clergyman's visitation.

Both the canon and the rubric contemplate the use of the Visitation Office, the clergyman being directed in the first "to instruct and comfort them in their distress, according to the order of the Communion Book;" and the first rubric directing that when notice of a person's sickness has been given, the minister, "coming into the sick person's house, shall say" the office then following in continuous order.

But the canon has the express limitation following the above words, "if he be no preacher;" and it is added, "if

he be a preacher, then as he shall think most needful and convenient." Preachers' licences are not now in general use; but, if it be considered that the office of preaching is not practically limited, in the present day, to any part of the clergy, then the canon gives a discretion to all of them as to the manner in which they shall instruct and comfort sick persons in their distress—whether by the use of the office in its integrity, by an adaptation of it, or by other forms—*extempore*, written, or printed.

Confession.

There is one portion of the rubric which requires some detailed notice—namely, the direction respecting Confession. This rubric is (like the rest of the office) substantially taken from the pre-Reformation "Ordo ad visitandum infirmum." In that office, after other words of exhortation, the priest was ordered to say: "Si ergo vis mundum cor et conscientiam sanam habere, peccata tua universa confitere . . ."—the words doubtless being said in English, as some other parts of the office were. In the Prayer Book of 1549 the exact words to be said by the priest were not introduced, but a rubric was printed, which has undergone the following transitions:—

1549.	1552.	1661.
Here shall the sick person	Here shall the sick person	Here shall the sick person be moved to
make a special confession	make a special confession	make a special confession of his sins,
if he feel his conscience troubled with any weighty matter.	if he feel his conscience troubled with any weighty matter.	if he feel his conscience troubled with any weighty matter.



After which confession the Priest shall absolve him	After which confession the Priest shall absolve him	After which confession the Priest shall absolve him (if he humbly and heartily desire it)
after this form: and the same form of absolution shall be used in all private confessions.	after this sort.	after this sort.

It is plain that the kind of confession named in this rubric is that which is popularly known as "auricular" confession; for although privacy is not enjoined, it is quite certain that it would be sought both by priest and penitent. We may also be sure that without it the confession would most likely be of a very general instead of a "special" character. That it is also intended to be private or "auricular"—spoken to the ear of the priest alone—is shown by the original form of the rubric in 1549, which speaks of "all private confessions" with an evidently inclusive sense—this here enjoined being one of the kind included. It is also evident that the introduction of the words "be moved to" into the later form of the rubric imposes a distinct duty on the clergy, though a corresponding liberty is given by them to the sick man.

The general law of the Church of England on the subject of Confession is set forth in the next chapter [pages 173–176]; it is not necessary here, therefore, to add more than that what is there said on secrecy applies with equal force to confessions received from sick or dying persons.

In the first English Prayer Book (that of 1549), the rubric provided a peculiar custom of reservation of the Holy Communion for administration to sick persons: "If the same day there be a celebration of the Holy Communion in the church, then shall the priest reserve (at the open Communion) so much of the Sacrament of the Body and Blood as shall serve the sick person, and so many as shall communicate with him (if there be any); and so soon as he conveniently may, after the open Communion ended in the church, shall go and minister the same, first to those that are appointed to communicate with the sick (if there be any), and last of all to the sick person himself. But before the curate distribute the Holy Communion, the appointed *general confession* must be made in the name of the communicants, the curate adding the *absolution with the comfortable words of Scripture* following in the open Communion; and after the Communion ended, the Collect, '*Almighty and ever living God, we most heartily thank thee,*' &c. But if the day be not appointed for the open Communion in the church, then (upon convenient warning given) the curate shall come and visit the sick person afore noon. And having a convenient place," &c.

The Communion of the Sick.

The same practice was also provided for in another way by the second rubric at the end of the same office:—"And if there be more sick persons to be visited the same day that the curate doth celebrate in any sick man's house, then shall the curate (there) reserve so much of the Sacrament of the Body and Blood as shall serve the other sick persons, and such as be appointed to communicate



with them (if there be any), and shall immediately carry it and minister it unto them."

It will thus be seen that the original form of our office provided for reservation in ordinary cases, and for private celebration in exceptional ones. In 1552 both the above rubrics were dropped, and private celebration alone provided for—the present Collect, Epistle, and Gospel being then appointed. The rubric respecting reservation reappears, however, eight years later, in the Latin Prayer Book of Queen Elizabeth's reign—from which fact it may be reasonably concluded that the practice did not altogether cease when the rubric dropped out of the English Prayer Book in 1552. The same conclusion may be drawn from the continuance of the practice in the Scottish Church, and by the Non-jurors.

It would thus appear that the words of the 28th Article of Religion, "The Sacrament of the Lord's Supper was not by Christ's ordinance reserved," were not then understood as forbidding reservation. The practice of reservation doubtless died out gradually, though that of celebration in the sick person's room has since taken its place almost universally in its stead.

At the same time that the private celebration has been adopted more freely than in ancient days, restriction has been laid upon a too free use of it by Canon 71, which enjoins that, "No minister shall . . . administer the Holy Communion, in any private house, except it be in times of necessity, when any, being either so impotent as he cannot go to the church, or very dangerously sick, are desirous to be partakers of the Holy Sacrament, upon

pain of suspension for the first offence, and excommunication for the second;" while the rubric directs, "If the sick person be not able to come to the church, and yet is desirous to receive the Communion in his house, then he must give timely notice," &c. Thus, considerable limitation is indicated with respect to private celebrations of the Holy Communion; and it is very desirable that this limitation should be practically acted upon in the spirit of the canon, as the celebration of the Holy Communion in a room used for ordinary living, and on a table used for meals or other domestic purposes, is a practice which it is difficult to guard from irreverence, and from dishonour towards so holy a sacrament. Yet it must be remembered that the Primitive Church would not refuse Communion to any dying person. [Nicene Canons, canon xiii.]

Extreme Unction.

The Unction of the Sick was provided for in the first Prayer Book, by the rubric: "If the sick person desire to be anointed, then shall the priest anoint him upon the forehead or breast only, making the sign of the cross, saying thus, As with this visible oil thy body is outwardly anointed," &c., concluding with the 13th Psalm. This office was omitted in the revision of 1552, and has not been restored. No censure or condemnation of the practice, however, accompanied the omission, nor has any such ever been made by the Church of England. But the 25th Article of Religion says that Extreme Unction is not to be accounted for a sacrament of the Gospel, not having the like nature of the sacraments of Baptism and the Lord's Supper, because it has not any visible sign or ceremony ordained of God.

Chapter VIII.

THE PRACTICE OF CONFESSION.

FOR some generations the practice of Confession had fallen so generally into disuse in the Church of England, that it came to be considered by many persons as unrecognised in our post-Reformation system, and even as unlawful. There is, however, a distinct recognition of it in the Prayer Book, the Canons of 1603, and the Homilies; it has been continuously in use by wise, orthodox, and holy Anglican clergy and laity, and there is no law whatever against it.

Injunctions of the Church of England respecting Confession.

There are, as may be supposed, in the old canon law of the Church of England, many references to the duties of the clergy as regards the receiving of confessions: and there being little statute law on the subject to which these can be repugnant, they must be considered as still to a certain extent in force. Setting aside these, however, together with the statements contained in the 'Institution' and the 'Erudition of a Christian Man,' there are still four specific references to the practice in more recent documents. One of these has been already dealt with in the preceding section—viz., the rubric which enjoins that

sick persons shall be moved to make special confessions [p. 168].

Another is found at the close of the familiar exhortation directed to be used by the minister when giving warning of the celebration of the Holy Communion: "And because it is requisite, that no man should come to the Holy Communion, but with a full trust in God's mercy, and with a quiet conscience; therefore if there be any of you, who by this means cannot quiet his own conscience herein, but requireth further comfort and counsel, let him come to me, or to some other discreet and learned Minister of God's Word, and open his grief; that by the ministry of God's Holy Word he may receive the benefit of absolution, together with ghostly counsel and advice, to the quieting of his conscience, and avoiding of all scruple and doubtfulness." In the original form of this exhortation (1549), there was a further period, of about equal length with the above paragraph, which seems to indicate that an apologetic tone was deemed expedient at the earlier period of the Reformation, for which there was no necessity afterwards. This was as follows: "Requiring such as shall be satisfied with a general confession, not to be offended with them that do use, to their further satisfying, the auricular and secret confession to the priest; nor those also which think needful or convenient, for the quietness of their own consciences, particularly to open their sins to the priest, to be offended with them that are satisfied with their humble confession to God, and the general confession to the Church. But in all things to follow and keep the rule of charity, and



every man to be satisfied with his own conscience, not judging other men's minds or consciences; whereas he hath no warrant of God's Word to the same."

A third reference to the subject is to be found in the second part of the Homily of Repentance, where it is said: "If any do find themselves troubled in conscience, they may repair to their learned curate or pastor, or to some other godly learned man, and show the trouble and doubt of their conscience to them, that they may receive at their hand the comfortable salve of God's Word." The latter expression was not commonly used, at the time when the Homilies were written, for the Holy Bible, but was customarily applied to any authoritative form used in the name and by the authority of God, and especially for the Word of Absolution as ordained by Our Lord, and so referred to in the Form of Absolution used in the Visitation of the Sick.

There is also, fourthly, the 113th canon of 1603, which enjoins secrecy on the minister in respect to all confessions confided to him: "Provided always, that if any man confess his secret and hidden sins to the minister, for the unburdening of his conscience, and to receive spiritual consolation and ease of mind from him, we do not in any way bind the said minister by this our Constitution, but do straitly charge and admonish him, that he do not at any time reveal or make known, to any person whatsoever, any crime or offence so committed to his trust and secrecy (except they be such crimes as, by the laws of this realm, his own life may be called in question for concealing the same), under pain of irregularity." This canon is, of

course, in the interest of the person making the confession, not in that of the priest who receives it: and the force of it may be better understood by remembering that "irregularity" meant *deprivation, accompanied by incapacity for taking any benefice whatever, while under its operation.*

From these authorities, it will be seen that the practice of private confession is clearly recognised as having a place in the system of the Church of England. The 113th canon of 1603 is binding upon the clergy, and could no doubt be enforced against them, though not forming part of the statute law. The rubric in the Office for the Visitation of the Sick, and the exhortation at Communion, are, however, part of the statute law [14 Car. II. ch. 4], as well as of the Church formularies; and as such they have an additional force, against which there is no statutory counterpoise whatever. Nor is there any judicial decision which gives any other interpretation of the law—that given by the Privy Council in Poole's case [Poole *v.* Bp. Lond. 14 Moore, P. C. 262] not bearing on the subject, although the use of Confession had given rise to the appeal.

As to the frequency or habitual use of Confession, there is no distinct utterance of modern English law; and no doubt the responsibility of determining it is left to the discretion of spiritual guides.

But a constitution of Canterbury, passed A.D. 1378, directs "Confessiones ter in anno audiantur;" and there are several such constitutions, which order that Confession shall never be denied to prisoners, or to those who are at the point of death.

Chapter IX.

THE BURIAL OF THE DEAD.

§ 1. *Unbaptized Persons* . 178
§ 2. *Excommunicated Persons* 180
§ 3. *Suicides* 181
§ 4. *Obligation of the Clergyman in other Cases* . 183

AS a general rule, all persons are, by the common law, entitled to Christian burial, in the burial-place belonging to the church of the parish within whose boundaries they die, and not elsewhere.[1] By 48 Geo. III. ch. 75, this right is extended to the bodies of all persons "cast on shore from the sea, in cases of wreck, or otherwise." It is also a reasonable inference that the same right extends, further, to the bodies of persons discovered in any parish, but the place of whose death is unknown.

General rule as to right of burial.

This right includes that of being buried according to the customs of the Church of England, as set forth in "The Order for the Burial of the Dead," contained in the Book of Common Prayer.

According to Church customs.

[1] But no claim to bury in a particular part of the churchyard can be maintained. The Court of Queen's Bench has emphatically refused to recognise any such right, and has declared that the clergyman's discretion is to be used and submitted to in choosing the site of a grave or vault.

The only limitations of this general rule which are known to the law are those stated in the first rubric of the Burial Office. Here is to be noted, that the office ensuing is not to be used for any that die unbaptized, or excommunicate, or have laid violent hands upon themselves. It has been expressly decided, that persons dying in a state of intoxication have a right to burial. [Cooper *v.* Dodd, 2 Roberts, *Eccl. Rep.* 270.] The three limitations above noticed are, however, of great importance, and require consideration in some detail.

§ 1. *Unbaptized Persons.*

To be taken strictly.

The exception of "any that die unbaptized" must be taken in its strictest sense: that is, for those of whom it is not only believed, but of whom it is certain, that they have died unbaptized.

Baptism of adults to be usually taken for granted.

In the great majority of cases, when adult persons are brought to burial, no evidence on the subject is attainable by the responsible clergyman, either one way or the other: and even if it were attainable, there is no obligation on the part of any one connected with the deceased to give it. In rare cases it may be within the knowledge of the clergyman that the deceased person, from his own sectarian scruples, declined to be baptized; or that he belonged to a professedly Christian community which repudiates Christian baptism; or that he had been a Jew, Mahometan, Buddhist, or other heathen, from his birth to his death: and in such cases the law is clear, that the Burial Office is not to be used. But it is an ancient rule of the Church,

that while conditional baptism should be administered to a living person, of whom it is uncertain whether or not he has been baptized previously—in the case of deceased persons, in a Christian country, their baptism is to be taken for granted unless there is proof to the contrary.

Cases of young children.

In the case of infants and young children, the clergyman of the parish is much more likely to know whether or not baptism has been administered; and while he may ordinarily assume that an adult has been baptized, and need make no inquiry (except under special circumstances), he may also ordinarily assume that an infant under the usual age when they are brought to baptism has not been baptized, and is fully justified in making careful inquiry on the subject. It need hardly be added, that lay-baptism (whether by professed laymen, or by Dissenting preachers) entitles a person to the use of the Burial Office as much as baptism by a clergyman. The question was very unnecessarily carried into court in two cases (Kemp *v.* Wickes and Mastin *v.* Escott) some years ago [3 Phill. 264, 2 Curt. 692, 4 Moore, P. C. 104]; but the validity of lay-baptism was then definitively ruled, as is shown at page 47.

In respect to this limitation of the general right to Christian burial, it is plain, therefore, that the cases will be very few in which it needs to be enforced in a Christian country. At the same time it is also clear, in the words of Archbishop Longley, "that the Service of the Church of England for the Burial of the Dead is intended for those who have been made members of the Church of Christ by baptism, and that to use that service over the unbaptized



would be an anomalous and irregular proceeding on the part of a minister of the Church of England."[1]

§ 2. *Excommunicated Persons.*

In the 68th canon of 1603, this limitation appears in the words, "except the party deceased were denounced excommunicated *majori excommunicatione*, for some grievous and notorious crime, and no man able to testify of his repentance." The rubric dates from A.D. 1661, but it does not in any way lessen the force of the canon; and consequently the latter must be taken as a recognised interpretation of the former already existing when the rubric was framed, and ruling the sense of the word "excommunicate" as there used. It is clear that *sentence* of excommunication must have been passed to render the party deceased "denounced excommunicated *majori excommunicatione*." It is also important to remark, that even in the case of the greater excommunication, a saving clause is still added, "and no man able to testify of his repentance." A formal absolution before death, by the authority which has passed the sentence of excommunication, is not, therefore, of absolute necessity to admit the use of the Office; an opening being left for the exercise of the charity of the Church towards even one excommunicated from its fold, if his repentance before death can be credibly shown to have taken place.

While discipline is so little exercised as at present, there is seldom any occasion for taking this part of the rubric into consideration; but it is possible that a revival

[1] Letter to a Unitarian preacher at Tenderden, May 20th, 1865.

of discipline may take place, to the extent, at least, of excommunicating open and notorious evil livers, when it might sometimes become necessary to decide whether this charity of the Church could be exercised or not.

§ 3. *Suicides.*

The part of the rubric which forbids the Burial Service to be used over any that "have laid violent hands upon themselves" is, unfortunately, that which comes most frequently before the clergy, and its interpretation is not unattended with difficulty. The rule itself is of high antiquity, and had its counterpart even in the customs of the Jews and the heathen [Joseph. *De bello Judaic.* III. viii. 5; Aristot. *Ethic. Nichom.* v.; Plinii *Hist. Nat.* xxxvi. 15]; and it is not surprising to find it among the laws relating to the use of a Christian service of hope, when it is associated with a person who has done his best to place himself out of the reach of hope by an act of murder which has left him no time for repentance.

But by the common law of the land suicides are divided into two classes—those who have committed felony by a wilful murder of themselves, and those who have killed themselves while in a state of insanity. The first are held fully responsible for the consequences of their act; their bodies being ordered to be privately buried in a churchyard or other burial-ground between the hours of nine and twelve at night. [4 Geo. IV. ch. 52.][1] The

[1] This Act was passed simply to abolish the custom of burying in cross-roads with a stake driven through the body. It was immediately suggested by the self-murder of a parricide in Grosvenor

second are considered to be in no degree responsible for their act, and the law does not impose any penal consequences upon it.

Christian charity requires that some distinction should be made, and such a distinction was implied, at least, by the ancient canon on the subject. Thus the Council of Bracara, or Braga, in Spain [A.D. 563], enjoins: "Concerning those who *by any fault* inflict death on themselves, let there be no commemoration of them in the Oblation. . . . Let it be enjoined that those who kill themselves by sword, poison, precipice, or halter, or by any other means bring violent death upon themselves, shall not have a memorial made of them in the Oblation, nor shall their bodies be carried with psalms to burial." This canon was adopted among the Excerpts of Egbert in A.D. 740, it is substantially repeated among some Penitential Canons of the Church of England in A.D. 963, and it expresses the general principle of the canon law on the subject. This principle certainly indicates, that a distinction should be made between those who "by any fault" cause their own deaths, and those who do so when they are so far deprived of reason as not to be responsible in the sense of doing it by "any fault," wilfully and consciously. And the rubric being thus to be interpreted by a law of charity, the responsibility of deciding in what cases exceptions shall be made to its injunction is, by the nature of the case, thrown upon the clergyman who has cure of souls in the parish where the suicide is to be buried.

Place, who was so buried at the place where the Queen's Road crosses it, a large lamp-post now covering the spot.

In coming to this decision, the verdict of the coroner's jury should have respectful attention, though it is not to be considered as an invariable law for the clergyman.[1] He will of course remember that, however unsatisfactory such a tribunal may be, it is the only tribunal before which the question is tried at all; and that any opinion which he personally may form must be formed, as a rule, upon loose conversation, often repeated through many mouths, and always given without the sanction or solemnity of an oath, with a very indifferent and careless sense of responsibility in the speaker, and without any sifting or cross-examination. If, however, after giving full weight to all these circumstances, the clergyman should feel convinced beyond doubt that there was no such insanity as to deprive the suicide of ordinary moral responsibility, then he is to remember—(1) that he is a "steward of the mysteries of God," who has no right to misapply the blessings given him to dispense; and (2) that the scandal, and encouragement to suicide, which result from a too easy compliance, are in themselves great evils, which it is his duty, when it is within his power, to prevent.

§ 4. *The Obligation of the Clergyman in other Cases.*

With the above limitations, the rector or vicar of a parish is bound by law to say the Burial Service in its

[1] The "Coroner's Warrant" for the burial of a body over which an inquest has been held, is simply a discharge of the body from the custody of the Crown. In ordinary cases it is unconditional, and imposes no obligation of any kind as to interment. In a case of *felo de se* it orders burial in the manner stated above.

integrity—either personally, or by a sufficient deputy—over every person dying, or found dead, in his parish. This obligation is expressed in the 68th canon of 1603, which is, so far as relates to burials, as follows: "No minister shall refuse or delay to bury any corpse that is brought to the church or churchyard, convenient warning being given him thereof before, in such manner and form as is prescribed in the said Book of Common Prayer. And if he shall refuse to bury the 'corpse' (except the party deceased were denounced excommunicated, *majori excommunicatione*, for some grievous and notorious crime, and no man able to testify of his repentance), he shall be suspended by the bishop of the diocese from his ministry by the space of three months."

Refusal to use the Service.

This canon thus imposes the penalty of three months' suspension for refusal to bury (though not for delay), but requires "convenient warning" to be given, which may reasonably be interpreted to mean a notice given at least the day before. It should be carefully remembered by the clergyman, that no person may be buried in the churchyard without the full Burial Service being performed. In the words of Sir John Nicholl in Kemp *v.* Wickes [3 Phill. *Rep.* 295], "Our Church knows no such indecency."

At the Savoy Conference of A.D. 1661, the Puritans objected to the words—"that when we depart this life we may rest in Him, as our hope is this our brother doth." Their objection was, that "these words cannot be used with respect to those persons who have not by their actual repentance given any ground for the hope of their blessed



estate." To this objection the Bishops answered: "We see not why these words may not be said of any person we dare not say is damned, and it were a breach of charity to say so even of those whose repentance we do not see; for whether they do not inwardly and heartily repent, even at the last act, who knows? And that God will not even then pardon them upon such repentance, who dares say? It is better to be charitable and hope the best, than rashly to condemn."

Registrar's Certificate required.

Before any burial takes place, the clergyman should have a certificate from the registrar, stating that the death of the deceased person has been duly registered.[1] If this certificate is not delivered at the time appointed for the funeral, the clergyman cannot refuse to bury the corpse, but must forthwith give notice thereof in writing to the registrar. Omission to give such notice within seven days involves a penalty not exceeding ten pounds. [6 & 7 Will. IV. ch. 86, § 27; 37 & 38 Vict. ch. 88, § 17.]

Registration of the burial in the church register is ordered by the 70th canon of 1603.

[1] For this registration of death, the registrar needs (1) a medical certificate stating the cause of death, and (2) the personal testimony of some one who was actually present at the time of death.

Book III.

THE PAROCHIAL CLERGY.

Chapter I.

HOLY ORDERS.

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THE law of the Church of England respecting ministerial capacity is very strict, none being accounted to possess it but those who have received it from a bishop. It is equally strict in respect to the exercise of ministerial capacity, none being considered as lawfully doing so except those who have a commission from a bishop to exercise it.

The 23rd Article of Religion states that: "It is not lawful for any man to take upon him the office of publick preaching, or ministering the Sacraments in the Congregation, before he be lawfully called, and sent to execute the same. And those we ought to judge lawfully called and sent, which be chosen and called to this work by men

who have publick authority given unto them in the Congregation, to call and send Ministers into the Lord's vineyard." Standing by itself, this statement might not seem to refer exclusively to episcopal ordination; but the Preface before the Offices for Ordination has a very definite statement and enactment[1] on the subject, by which that of the Article of Religion must be interpreted: "It is evident unto all men diligently reading the Holy Scripture and ancient Authors, that from the Apostles' time there have been these Orders of Ministers in Christ's Church: Bishops, Priests, and Deacons. Which Offices were evermore had in such reverend estimation, that no man might presume to execute any of them, except he were first called, tried, examined, and known to have such qualities as are requisite for the same; and also by publick Prayer, with Imposition of Hands, were approved and admitted thereunto by lawful Authority. And therefore, to the intent that these Orders may be continued, and reverently used and esteemed in the United Church of England and Ireland, no man shall be accounted or taken to be a lawful Bishop, Priest, or Deacon in the United Church of England and Ireland, or suffered to execute any of the said functions, except he be called, tried, examined, and admitted thereunto, according to the Form hereafter

[1] Being part of 3 & 4 Edw. VI. ch. 12, 5 & 6 Edw. VI. ch. 1, and of 14 Car. II. ch. 4, §§ 2, 20. An Act of 1804 confirms the statutory obligation of this preface in the words: "Whereas by the Prefaces to the Forms of Ordination of Priests and Deacons, established and used by authority of several Acts of the Parliaments of England and Ireland respectively." [44 Geo. III. ch. 43.]

following, or hath had formerly Episcopal Consecration or Ordination."

That the "lawful authority" is "episcopal authority" is shown by the concluding clause, and also by the whole substance and tenour of "the Form hereafter following." That Form is further shown to contain a true exposition of what is meant by such lawful authority in the 36th Article of Religion: "The Book of Consecration of Archbishops and Bishops, and Ordering of Priests and Deacons, lately set forth in the time of Edward the Sixth, and confirmed at the same time by authority of Parliament, doth contain all things necessary to such consecration and ordering; neither hath it anything, that of itself is superstitious and ungodly. And therefore whosoever are consecrated or ordered according to the rites of that book, since the second year of the forenamed King Edward unto this time, or hereafter shall be consecrated or ordered according to the same rites; we decree all such to be rightly, orderly, and lawfully consecrated and ordered." Which is confirmed by the 8th canon of 1603: "Whosoever shall hereafter affirm or teach, That the Form and Manner of making and consecrating Bishops, Priests, and Deacons, containeth anything in it that is repugnant to the Word of God, or that they who are made bishops, priests, or deacons, in that form, are not lawfully made, nor ought to be accounted, either by themselves or others, to be truly either bishops, priests, or deacons, until they have some other calling to those divine offices; let him be excommunicated *ipso facto*, not to be restored until he repent, and publicly revoke such his wicked errors."

Thus it is clear that, by the law of the Church of England, no one is to execute the functions belonging to any office of the ministry, unless he has been ordained according to the Form set forth in the Prayer Book, or has received episcopal consecration or ordination elsewhere than in the Church of England. This law admits the orders of the Irish, Scottish, American, and also those of all Churches in British possessions.[1] It admits also

[1] The following are the statutory provisions respecting any "person who has been or shall be ordained priest or deacon, as the case may be, by any Bishop other than a Bishop of a Diocese in" the Church of England or the Church of Ireland. [37 & 38 Vict. ch. 77.]

1. He cannot officiate in any Church or Chapel of the Church of England without the written permission of the Archbishop of the Province, given after he has subscribed the declaration at page 199, with the words "whilst ministering in England" added between "I" and "will use." The penalty for officiating without these preliminary steps is ten pounds for every offence, the Incumbent being liable to a similar penalty.

2. He can act as Curate, or hold preferment, by obtaining the previous consent in writing of the Bishop of the Diocese in addition to the Archbishop's consent and the subscription before required.

3. After having been Curate or Incumbent, or Curate and Incumbent, for not less than two years, he may be placed in the same position as Clergy ordained in England or Ireland by a Licence from the Archbishop of the Province.

Clergy of the "Protestant Episcopal Church in Scotland" are not entitled to be licensed as Curates or hold preferment without the consent of the Bishop of the Diocese, nor without taking the declaration and subscriptions required of English clergy. Any such clergyman officiating on more than one day in three months without giving notice to the Bishop of the Diocese, or officiating against the Bishop's injunction under hand and seal, is to forfeit ten pounds. But these provisions do not apply to persons previously beneficed in England or Ireland. [27 & 28 Vict. ch. 94.]

the orders of the Roman Catholic and Eastern Churches. But the ordinations of Scottish Presbyterians, of Dissenters in England, Ireland, or other British possessions, of American or European non-episcopal communities, are not ordinations within the meaning of the statute of which the first-quoted passage forms a part, and do not qualify the persons so ordained to take any part in the ministrations of the Church of England.[1]

The laws and customs of the Church which particularly relate to ordination have for their object the provision of a ministry which, in each several order, shall be properly qualified as to (1) age, (2) character, (3) sphere of duty, (4) education, (5) orthodoxy, and (6) spiritual capacity. The first five of these qualifications are independent of the act of ordination—the sixth depends entirely on that act itself.

§ 1. *Preparation for and Admission to the Order of Deacons.*

[1.] The age at which deacon's orders could be received was anciently fixed at twenty-five years, in analogy with that at which a Levite was admitted to serve in the Tabernacle.[2] This minimum of age was retained during the

[1] "Any person, falsely pretending to be in Holy Orders, who shall solemnize matrimony according to the rites of the Church of England," commits a felony, and is punishable with transportation for fourteen years. [4 Geo. IV. ch. 76, § 21.]

[2] "In veteri lege ab anno vicesimo et quinto Levitæ tabernaculo servire mandantur, cujus auctoritatem in canonibus et sancti Patres secuti sunt." [IV. Conc. Tolet. XX. A.D. 671.] The canon



Middle Ages (though the rule was often set aside by dispensation); but the Pontifical of the sixteenth century made the age sufficient if it was not under twenty. The existing law of the Church of England (which agrees with that of the Roman Churches as laid down by the Council of Trent, Sess. xxiii. ch. 12) has fixed twenty-three years as the ordinary age for admission to the diaconate. Thus the preface to the ordinal directs, "And none shall be admitted a deacon except he be twenty-three years of age, unless he have a faculty;" and the same direction is given in the 34th canon of 1603. In the year 1804, a statute was passed, entitled "An Act to enforce the due Observance of the Canons and Rubrics respecting the Ages of Persons to be admitted into the Sacred Orders of Deacon and Priest" [44 Geo. III. ch. 43], in which it was enacted that any person ordained deacon before twenty-three, or priest before twenty-four years of age, should be wholly incapable of holding any preferment, and that his admission to orders should be void in law as if it had never been made. A second clause of the same Act saved the rights of the Archbishops of Canterbury and Armagh to grant faculties, but made no other exceptions whatsoever. No bishop of the Church of England can, therefore, lawfully ordain any man deacon before he has attained the age of twenty-three years complete, except by a special faculty from the

Competent age required.

goes on to say, that men are ordained so early that they have no experience of life, and orders that twenty-five years shall be the minimum for deacons, thirty years for priests. See also the 91st of the Excerpts of Egbert, A.D. 740.

Archbishop of Canterbury: and if any person should be so ordained, he is incapable ever after of holding "any parsonage, vicarage, benefice, or other ecclesiastical promotion or dignity whatsoever."

This being the case, every candidate for deacon's orders is required to send among his papers a CERTIFICATE OF BAPTISM, or (if that cannot be obtained) an affidavit, made by one of his parents or some other competent person, setting forth the particulars of his age and the place of his baptism, with the reason why the ordinary certificate cannot be produced.[1] This proceeding is not, however, enacted in any law of the Church, and each bishop is justified in determining what evidence of age he will require, subject to the responsibility entailed by the above Act.

[PAPER I.] **Evidence of competent age.**

[2.] To the standard of a certain maturity of age is also to be added that of an established character. For this, of course, only general evidence can be obtained; and this is done by means of Letters Testimonial, and the document called "Si Quis,"—the first testifying, positively, to the personal knowledge of responsible clergymen; the second, negatively, to the knowledge of the laity of the parish to which the candidate for Orders belongs.

Evidence of character.

LETTERS TESTIMONIAL are required[1] from the authorities

[1] A certificate of birth would be sufficient evidence as to age, but it is evident that a person must be a Christian before he can be a deacon, and so evidence of baptism also is required.

[2] By 13 Eliz. ch. 12, § 4, and Canon 34 of 1603.

of any college in which the candidate has been educated, with reference to the time during which the candidate has been resident there. If the candidate has ceased to reside, a further testimonial is required from three beneficed clergymen to whom he is personally known, with reference to the three years last passed, or to any shorter time during which they may have known him. The form of the latter is usually as follows:

[PAPER 2.] **College Testimonial.**

[PAPER 3.] **Testimonial of three beneficed clergymen.**

"*To the Right Reverend* William *by Divine permission Lord Bishop of*——.

"Whereas our beloved in Christ, *John Smith, Bachelor of Arts*, of *Oriel* College, in the University of *Oxford*, hath declared to us his intention of offering himself as a candidate for the sacred office of a Deacon, and for that end hath requested of us letters testimonial of his good life and conversation; we therefore, whose names are hereunto subscribed, do testify that the said *John Smith* hath been personally known to us for the space of —— last past; that we have had opportunities of observing his conduct; that during the whole of that time we verily believe that he lived piously, soberly, and honestly; nor have we at any time heard anything to the contrary thereof; nor hath he at any time, as far as we know or believe, held, written, or taught anything contrary to the doctrine or discipline of the Church of England: and moreover we believe him, in our consciences, to be,

as to his moral conduct, a person worthy to be admitted to the sacred order of Deacons.

"In witness whereof we have hereunto subscribed our names, this *third* day of *May*, in the year of Our Lord one thousand eight hundred and *seventy-one*.

"GEORGE FETHERSTONE, *Rector of Exton.*
"JAMES HAMILTON, *Vicar of Sibsworth.*
"HENRY JONES, *Vicar of Adley.*"

If the benefices of either of the three clergymen signing the testimonial are situated out of the diocese of the bishop to whom the candidate applies for ordination, each signature must, according to practice, be certified by the countersignature of the bishop in whose diocese the benefice of the signer is situated.

[PAPER 4.] **The "Si Quis."**

A further testimonial to character is required in the form of a document which is still called "Si Quis," from its first words when in Latin. This is to be read publicly during the time of Divine Service, in the parish church of the candidate, by one of the officiating clergy; the reading of it, and the absence of any objection to the candidate's character, being certified by the officiating minister and a churchwarden:—

"Notice is hereby given, that *John Smith, Bachelor of Arts*, of *Oriel* College, in the University of *Oxford*, and now resident in this parish, intends to offer himself as candidate for the holy office of a Deacon at the ensuing ordination of the Lord Bishop of ——; and



if any person knows any just cause or impediment for which he ought not to be admitted into Holy Orders, he is now to declare the same, or to signify the same forthwith to the Lord Bishop of ——.

"We do hereby certify, that the above notice was publicly read by the undersigned *James Hamilton* in the parish church of *Sibsworth*, in the county of *Devon*, during the time of Divine Service, on Sunday the *third* day of *August*, 1871, and no impediment alleged.

"Witness our hands this third day of August, in the year of Our Lord one thousand eight hundred and seventy-one.

"JAMES HAMILTON, *Vicar.*

"RICHARD TREVELYAN, *Churchwarden.*"

The rights and duties of the laity, in preventing the introduction into the ministry of persons whose character is objectionable, are still further provided for by a "Si Quis" in the Ordination Service itself, where, after the testimony of the clergy has been given by the archdeacon, it is ordered as follows: "*Then the bishop shall say unto the people,* 'Brethren, if there be any of you who knoweth any impediment, or notable crime, in any of these persons presented to be ordained deacons, for the which he ought not to be admitted to that office, let him come forth in the Name of God, and show what the crime or impediment is.'

"And if any great crime or impediment be objected, the bishop shall surcease from ordering that person, until such time as the party accused shall be found clear of that crime."

The general analogy of the "Si Quis" to "Banns" is obvious.

Title to Orders.

[3.] Every person who seeks to be ordained is required to provide himself with some sphere of duty in which to exercise his office, such a provision being called his "Title to Holy Orders." The traditional rule of the Church on this subject[1] was embodied in the 33rd canon of 1603, which is the law at present regulating the practice of bishops. This canon is as follows: "It hath been long since provided, by many decrees of the ancient fathers, that none should be admitted either deacon or priest, who had not first some certain place where he might use his function. According to which examples we do ordain, that henceforth no person shall be admitted into sacred orders, except he shall at that time exhibit to the bishop of whom he desireth imposition of hands a presentation of himself to some ecclesiastical preferment then void in that diocese: or shall bring to the said bishop a true and undoubted certificate, that either he is provided of some church within the said diocese, where he may attend the cure of souls, or of some minister's place vacant, either in the cathedral church of that diocese, or in some other collegiate church therein also situate, where he may execute his ministry; or that he is a fellow, or in right as a fellow, or to be a conduct or chaplain, in some college in Cambridge or Oxford; or except he be a Master of Arts of

[1] Bishop Gibson says that the ancient canons on this subject are "without number," and instances the 6th canon of the Council of Chalcedon, A.D. 451 (adopted in the 51st of Archbishop Egbert's Excerpts), as the earliest.

five years' standing, that liveth of his own charge in either of the universities; or except by the bishop himself, that doth ordain him minister, he be shortly after to be admitted either to some benefice or curateship then void. And if any bishop shall admit any person into the ministry that hath none of these titles as is aforesaid, then he shall keep and maintain him with all things necessary, till he do prefer him to some ecclesiastical living. And if the said bishop shall refuse so to do, he shall be suspended by the archbishop, being assisted with another bishop, from giving of orders by the space of a year."

But the only titles in common use for deacon's orders are fellowships and curacies: a fellowship providing the holder of it with the maintenance required by the canon.

The most usual title to deacon's orders is a curacy. The candidate has therefore to procure a "nomination" to a curacy from the rector or vicar under whom he is going to serve, the form of which will be found at page 215.

[Paper 5.] **Nomination to curacy.**

[4.] Another qualification required of those to be ordained clergymen is that of sufficient learning for the proper discharge of their office. The amount of such learning is partly defined by the 34th canon of 1603, which requires that none shall be ordained except he "hath taken some degree of school in either of the said universities; or, at the least, except he be able to yield an account of his faith in Latin, according to the Articles of Religion approved in the synod of the bishops and clergy of this realm, one thousand five hundred sixty and two, and to confirm the same by sufficient testimonies out



of the Holy Scriptures." The same standard is laid down in 13 Eliz. ch. 12, § 4, with the exception, however, if he "have special gifts and abilities to be a preacher."

Modern bishops require that every university man shall produce some evidence that he has studied divinity at the university in which he has taken his degree. This is given, either by a certificate of the Oxford Divinity Professor that the candidate has attended his lectures, by a certificate of his having passed the "Theological Examination" at Cambridge, by a similar testimonium to the last from Dublin, or by the "Licence of Theology" from Durham.[1]

[PAPER 6.] **Certificate of divinity studies.**

None of these, however, supersede examination by the bishop and his deputies. This is ordered by the preface to the ordinals, and (under penalty) by the 35th canon of 1603. The preface requires the bishop to know, by himself or by sufficient testimony, that the candidate is a man of virtuous conversation, and without crime, and then to ordain him only if, "after examination and trial," he has found him to be "learned in the Latin tongue, and sufficiently instructed in Holy Scripture." The 35th canon enacts as follows: "The bishop, before he admit any person to holy orders, shall diligently examine him in the presence of those ministers that shall assist him at the imposition of hands; and if the said bishop have any lawful impediment, he shall cause the said ministers carefully to examine every such person so to be ordered. Provided, that they who

Examination by the bishop.

[1] Graduates are allowed to substitute for any of these a year's residence at a theological college.



shall assist the bishop in examining and laying on of hands, shall be of his cathedral church, if they may conveniently be had, or other sufficient preachers of the same diocese, to the number of three at the least: and if any bishop or suffragan shall admit any to sacred orders who is not so qualified and examined, as before we have ordained, the archbishop of his province having notice thereof, and being assisted therein by one bishop, shall suspend the said bishop or suffragan so offending, from making either deacons or priests for the space of two years."

The examination is generally conducted by one of the bishop's chaplains specially appointed for the purpose, and the usual subjects are Holy Scripture, the various formularies of the Church, and ecclesiastical history; but the details of it are entirely at the bishop's discretion, and there is no strict uniformity in respect to them.

[5.] The bishop's examination is also a test of orthodoxy; but a further pledge is required before ordination, the candidate being called upon, under Canon 36 of 1865, and the Clerical Subscription Act [28 & 29 Vict. ch. 122] to declare his assent to the doctrine of the Church of England as set forth in the Book of Common Prayer and the Thirty-nine Articles of Religion. The nature of this requirement is shown in the words of the canon itself: "No person shall hereafter be received into the ministry . . . except he shall first make and subscribe the following declaration, which for the avoiding of all ambiguities he shall subscribe in this order and form of words, setting down both his Christian and surname, viz.:—'I, A. B.,

Subscription to Prayer Book and Thirty-nine Articles.

do solemnly make the following Declaration: I assent to the Thirty-nine Articles of Religion, and to the Book of Common Prayer, and of Ordering of Bishops, Priests, and Deacons: I believe the doctrine of the Church of England, as therein set forth, to be agreeable to the Word of God; and in public prayer and administration of the Sacraments I will use the Form in the said Book prescribed, and none other, except so far as shall be ordered by lawful authority.' And if any bishop shall ordain, admit, or license any as is aforesaid, except he first have declared and subscribed in manner and form as here we have appointed, he shall be suspended from giving of orders and licences to preach for the space of twelve months."

At the same time also, an oath of allegiance to the Sovereign is to be taken, and an oath of canonical obedience to the bishop. The former, as appointed by 28 & 29 Vict. ch. 122, is as follows:—

Oath of Allegiance and Supremacy.

"I, *A. B.*, do swear that I will be faithful and bear true allegiance to Her Majesty Queen Victoria, her heirs and successors according to law. So help me God."

The oath of canonical obedience is:—

Oath of canonical obedience.

"I, *A. B.*, do swear that I will pay true and canonical obedience to the Lord Bishop of———, and his successors, in all legal and honest commands. So help me God."[1]

These oaths are taken as the last preliminary to the

[1] It has been said by the Privy Council, that "the oath of canonical obedience does not mean that the clergyman will obey all

ordination itself, and in the presence of the bishop by whom the person taking them is to be ordained.

§ 2. *Ordination to the Diaconate.*

[6.] Little need be said on the subject of the Ordination Service. The absolutely essential part of it is the imposition of hands, "the bishop laying his hands severally upon the head of every one of them, humbly kneeling before him," as is ordered in the rubric. Without this imposition of hands no one becomes a deacon in the Church of England; but it is also to be accompanied by words which define and limit the nature of the order given, viz.: "Take thou authority to execute the office of a Deacon in the Church of God; committed unto thee in the Name of the Father, and of the Son, and of the Holy Ghost. Amen." This is supplemented by the ceremony of delivering to each deacon the New Testament, with the words: "Take thou authority to read the Gospel in the Church of God, and to preach the same, if thou be thereto licensed by the bishop himself." This licence is practically comprehended in the licence to act as curate, which is given at page 220.

The functions and spiritual capacities of a person thus ordained to the diaconate are concisely set forth in one of

the commands of the bishop against which there is no law, but that he will obey all such commands as the bishop by law is authorized to impose." [Long *v.* Bishop of Capetown, Moore's *Priv. Counc. Reports*, N.S., vol. i. p. 465.]

the questions of the Ordination Service, in which the bishop is required to say thus:—

"It appertaineth to the office of a deacon, in the church where he shall be appointed to serve, to assist the priest in Divine Service, and specially when he ministereth the Holy Communion, and to help him in the distribution thereof, and to read Holy Scriptures and Homilies in the Church; and to instruct the youth in the Catechism; in the absence of the priest to baptize infants, and to preach, if he be admitted thereto by the bishop. And furthermore, it is his office, where provision is so made, to search for the sick, poor, and impotent people of the parish; to intimate their estates, names, and places where they dwell, unto the curate, that by his exhortation they may be relieved with the alms of the parishioners, or others."

This statement makes it clear that the deacon's office is not, properly, one of independent responsibility. Ancient canons of the Church of England order that a deacon shall not baptize at all except in case of grave necessity. [Wilkins' *Conc.* i. 501, 505, 636.] The assistance which a deacon can render to a priest in Divine Service is restrained by his incapacity for giving Absolution or Benediction: and in the ministration of the Holy Communion that assistance is expressly limited by the words quoted, which define it as—(1) assistance to the priest while he is celebrating the Sacrament, and (2) while he is distributing it. Thus the deacon is (as his name signifies) an attendant on the celebrant at the altar, to hand him what is necessary for use there, and to follow him with

the chalice (as was expressly directed by the Prayer Book of 1549), that "as the priest ministereth the Sacrament of the Body, so shall he, for more expedition, minister the Sacrament of the Blood." There is, however, no law of the Church forbidding the deacon to distribute the former *to the laity* as well as the latter, though they are forbidden to administer either to priests, by the 18th canon of the Council of Nicæa.

No authority is given to a deacon to solemnize marriages. The marriage ceremony is essentially an office of benediction, and therefore not within the capacity of the diaconate. It was also, anciently, associated directly with the celebration of the Holy Communion, and was doubtless considered as still so associated when the Ordination Service was drawn up. There is no ancient canon of the Church on the subject, simply because marriage by deacons was never thought of until modern times; but wherever the clergyman is mentioned in canons relating to marriage, it is always as "sacerdos" or "presbyter." So also in the rubrics of the "Form of Solemnization of Matrimony," the word "priest" is used nine times, "minister"[1] being used

[1] "Note, here it may be proper to observe, once for all, the equivocal signification of the word *minister*, both in our statutes, canons, and rubric in the Book of Common Prayer. Oftentimes it is made to express the person officiating in general, whether priest or deacon; at other times it denoteth the priest alone, as contradistinguished from the deacon—as particularly here in this statute, and in Canon 31, aforegoing. And in such cases, the determination thereof can only be ascertained from the connection and circumstances."—Burn's *Eccl. Law*, Phillimore Ed. iii. 44: See Sir R. Phillimore, *Eccl. Law*, 116.



in such a manner as to show that it means "executor officii," the "priest" joining together the hands of the couple, the "minister" saying, "Forasmuch as *N.* and *N.* have consented," &c., and the "minister" giving the blessing: all three acts being evidently intended to be performed by the same person, who is expressly called, in the first instance, by a title which wholly excludes the idea of a deacon ministering on the occasion.

It should at the same time be added, that marriage by a Deacon would be considered valid by the Courts, and that a Deacon so officiating would not be liable to ecclesiastical or other penalties.

A deacon, being thus incapable of celebrating the Holy Communion, of giving absolutions or benedictions, is incapable of receiving cure of souls: and accordingly, it is enacted, by 13 & 14 Car. II. ch. 4, § 14, that "no person whatsoever shall thenceforth be capable to be admitted to any parsonage, vicarage, benefice, or other ecclesiastical promotion or dignity whatsoever, nor shall presume to consecrate and administer the Holy Sacrament of the Lord's Supper, before such time as he shall be ordained priest," under a penalty of £100.

The legal evidence of admission to the diaconate (which is frequently required) is the original "Letters of Orders" given under the bishop's hand and seal: or, if that has been lost, a certificated copy of the entry in the bishop's register. The following is the form in which letters of deacon's orders are issued:—

"By the tenor of these Presents, We *William*, by Divine

Permission" [or "Providence,"[1]] Bishop of ——, do make it known unto all men that on Sunday, the 24*th* day of *September*, in the year of Our Lord one thousand eight hundred and *seventy-one*, We, the Bishop before mentioned, solemnly administering Holy Orders, under the protection of the Almighty, in our Cathedral Church of ————, did admit our beloved in Christ *John Smith* of *Oriel* College, *Oxford* (of whose virtuous and pious life and conversation, and competent learning and knowledge in the Holy Scriptures, we were well assured), into the Holy Order of Deacons, according to the manner and form prescribed and used by the Church of England; and him, the said *John Smith*, did then and there, rightly and canonically ordain Deacon, he having first in our presence freely and voluntarily made and subscribed to the Declaration contained in the Thirty-sixth Canon, and he likewise having taken the Oaths appointed by law to be taken for and instead of the Oath of Supremacy. In testimony whereof We have caused our Episcopal Seal to be hereunto affixed, the day and year above written, and in the —— year of our Consecration [*or* "Translation"].

A (*L. S.*) B

§ 3. *Preparation for Priest's Orders.*

[1.] No person can be made a priest who has not previously been made a deacon, nor without the lapse of

[1] This style is used by archbishops and by the Bishop of Durham.

some interval between the two ordinations. Thus the 32nd canon of 1603 enacts as follows:—"The office of deacon being a step or degree to the ministry, according to the judgment of the ancient fathers, and the practice of the Primitive Church; we do ordain and appoint, that hereafter no bishop shall make any person, of what qualities or gifts soever, a deacon and a minister both together upon one day; but that the order in that behalf prescribed in the book of making and consecrating bishops, priests, and deacons, be strictly observed. Not that always every deacon should be kept from the ministry for a whole year, when the bishop shall find good cause to the contrary; but that there being now four times appointed in every year for the ordination of deacons and ministers, there may ever be some time of trial of their behaviour in the office of deacon, before they be admitted to the order of priesthood."

The rubric at the end of the Ordination Office for deacons contains a similar injunction: "And here it must be declared unto the deacon, that he must continue in that office of a deacon the space of a whole year (except for reasonable causes it shall otherwise seem good unto the bishop), to the intent he may be perfect, and well expert in the things appertaining to the ecclesiastical administration. In executing whereof if he be found faithful and diligent, he may be admitted by his diocesan to the Order of Priesthood, at the times appointed in the canon; or else, on urgent occasion, upon some other Sunday, or Holy-day, in the face of the Church, in such manner and form as hereafter followeth."

Letters of deacon's orders must therefore be produced by every candidate for priest's orders.

[PAPER 1.] **Letters of Deacon's Orders.**

[2.] The minimum age for ordination to the priesthood is twenty-four years.[1] In the ancient Church, thirty years was the minimum fixed;[2] but probably there was more liberty allowed to the bishop in dispensing with the rule than is allowed by the existing law of the Church of England. The preface to the ordinal enacts, "And every man which is to be admitted priest shall be full four-and-twenty years old." And it is observable that no mention is made of a faculty or dispensation for inferior age, as is the case in speaking of the age necessary for deacons. The same rule is also laid down in the 34th canon of 1603; and by the Act of 1804, passed to enforce the due observance of the canons and rubrics respecting the ages of persons to be admitted into the sacred orders of deacon and priest. [44 Geo. III. ch. 43.] It is not lawful, therefore, for any person, under any circumstances whatever, to be ordained priest before the age of twenty-four: and a certificate of age having been given for deacon's orders, the Letters of Orders furnish the evidence required in the case of priest's orders.

Age for priesthood.

[3.] Similar evidence of good character to that required for deacons is also required for priests. Letters testimonial must therefore be obtained from three beneficed clergymen, to whom the candidate has been known for three years, or during the

[PAPER 2.] **Testimonial of three clergymen.**

[1] The Council of Trent orders an interval of one year [*Sess.* xxiii. ch. 14], but requires twenty-five years as the minimum of age. [Ibid. ch. 12.]

[2] See page 190.

time of his diaconate: the form used being the same, *mutatis mutandis*, as that used for obtaining deacon's orders; and the same necessity exists for counter-signature by bishops, if the circumstances are similar.[1]

It is the usual custom for every deacon to be ordained priest by the same bishop who gave him deacon's orders; but if circumstances necessitate removal to another diocese, "Letters Dimissory" are necessary, giving consent to the change, and also a new title.

The same opportunity as before is also given to the laity among whom the deacon is known to state objection as to character, the terms of the "Si Quis" being no further changed than by the substitution of "priest" for "deacon" in the statement of the Holy Order for which the candidate is about to apply.[2]

[PAPER 3.] "SI QUIS."

Similar securities for orthodoxy and learning are also taken by means of an examination, the subjects being so far changed from those placed before the candidate at his previous ordination, as to draw out the additional knowledge supposed to be acquired during a year or more of clerical life. The subscription and oaths are also of precisely similar character as those used at ordination to the diaconate.[3]

Examination.

Subscription.

§ 4. *Ordination to the Priesthood.*

[4.] The Office for the ordination of priests has a very different character from that for the ordination of deacons. The general tone of it is that of bestowing authority over

[1] See page 193. [2] See page 194. [3] See page 199.

others, while the tone of that for deacons is rather that of putting the person ordained under the authority of others. The pastoral office of the priest is kept in view throughout, but it is not referred to in the case of the deacon. An invocation of the Holy Ghost is used in the form of the hymn 'Veni Creator.' "The priests present" for the purpose, "to the number of three at least" [Canon 35], join with the bishop in the imposition of hands, a deacon being ordained by the bishop alone. But the most striking difference is in the words of ordination, which are as follows:—"Receive the Holy Ghost for the office and work of a priest in the Church of God, now committed unto thee by the imposition of our hands. Whose sins thou dost forgive, they are forgiven; and whose sins thou dost retain, they are retained. And be thou a faithful dispenser of the Word of God, and of His Holy Sacraments; in the Name of the Father, and of the Son, and of the Holy Ghost. Amen."

After which solemn personal application to the individual person of Our Lord's words in ordaining His apostles, the bishop is directed to deliver the Bible into the hands of every one of them as they kneel before him, and to say: "Take thou authority to preach the Word of God, and to minister the Holy Sacraments in the congregation, where thou shalt be lawfully appointed thereunto."[1]

[5.] The spiritual capacities and the functions of the priesthood are not so definitely stated in the admonition

[1] Deacons are ordained between the reading of the Epistle and the Gospel—priests between the Gospel and the Nicene Creed.

as those of a deacon are; but it is said, generally, that it is a "high dignity," "a weighty office and charge," to which priests are called: "that is to say, to be messengers, watchmen, and stewards of the Lord; to teach and to premonish, to feed and provide for the Lord's family; to seek for Christ's sheep that are dispersed abroad, and for His children who are in the midst of this naughty world, that they may be saved through Christ for ever."

The priesthood are, however, the great body of the Christian ministry, and their ministrations make up the ordinary work of the Church. It is their function to offer up Divine Worship as the representatives of the people, and to administer grace as the representatives of God. They have authority to consecrate the Holy Communion, to pronounce absolution, to bless in God's Name, and to take the care of souls generally, if they are instituted to it by a bishop.

By ordination to the priesthood (it has always been understood), an indelible character is received, which makes it impossible for one so ordained to cease to be a priest. "Let them know," says Hooker, "which put their hands unto this plough, that, once consecrated unto God, they are made His peculiar inheritance for ever. Suspensions may stop, and degradations utterly cut off the use or exercise of power before given; but, voluntarily, it is not in the power of man to separate and pull asunder what God by His authority coupleth." [Hooker's *Eccl. Pol.*, V. lxxvii. 3.] Such being the case, the 76th canon of 1603 enacts that, "No man being admitted a deacon or minister shall from thenceforth voluntarily relinquish the

same, nor afterwards use himself in the course of his life as a layman, upon pain of excommunication." It is possible that this canon relates only to deacons, "minister" being a title often used as synonymous with "deacon;" but if so, it shows that the framers of the canons did not even contemplate the possibility of relinquishing the priesthood for a layman's life.

By the "Clerical Disabilities Act of 1870," however, a priest or deacon may now set himself free from the yoke of Holy Orders, so far that he may become a layman again in the eye of the law, and thus be qualified for such offices and occupations as he could not have filled or undertaken while the law regarded him as a clergyman. This Act [33 & 34 Vict. ch. 91] provides that, after a clergyman has resigned any and every preferment held by him, he may execute a "deed of relinquishment," which is to be enrolled in the Court of Chancery.[1] A copy of this deed is to be sent to the bishop of the diocese in which the person resides or has held preferment, and notice of having done so is to be sent to the archbishop. At the end of six months the clergyman so acting may call upon the bishop to record the deed in the registry of his diocese. If, however, proceedings are pending against the clergyman in the Ecclesiastical Court, he shall suspend the registration of the deed till the termination of those proceedings. After registration of the deed, the priest or deacon so registered becomes incapable of officiating as such, or of

[1] After enrolment, if he has done nothing more, he has a *locus pœnitentiæ*, and may apply to have the enrolment vacated. [Anon. Law Rep. 15 Eq. 154.]

holding preferment, loses all his rights as a clergyman, and obtains all the rights of a layman; being still, however, responsible for any pecuniary liabilities which he may have incurred (such as for dilapidations) before the deed was registered.

This Act of Parliament applies, of course, only to the civil rights or disabilities associated with Holy Orders, and does not destroy the "character" before referred to, though it makes the use of it illegal.

Chapter II.

ASSISTANT CURATES.

THE theory of the Church (enforced by its laws) is that no clergyman can lawfully undertake any sphere of duty without the sanction of the bishop of the diocese. The highest form of this sanction is given by the ceremony of institution to a benefice; a lower form of it is that of a licence, which empowers a clergyman to undertake certain duties within the parish of another clergyman, the latter holding cure of souls. There are, however, certain benefices with cure of souls, called perpetual curacies, which are in almost all respects to be treated as other benefices, except that they are conferred by licence, not institution.

For the purpose of this chapter, therefore, the word "curate" is not to be taken in the Prayer Book sense of a priest having cure of souls, but in the more modern sense of a priest or deacon[1] licensed by the bishop of the diocese to assist a rector or vicar.

[1] The deacon's duties have, properly, nothing to do with the actual cure of souls; but the modern idea of a deacon is different from that of the Prayer Book and of the ancient Church, and he is entrusted with duties of a much higher class than formerly.

Such assistant clergy have always been recognised in the Church of England, under one name or another, as substitutes for non-resident incumbents; but they have increased in number largely during the last half-century, from the growth of population making parishes too large to be manageable by a single clergyman. Thus, also, a new class of clergy has sprung up, almost unknown in the Church—that of assistants to the *resident* clergy.

For the three centuries preceding the present, and probably before the Reformation also, curates were often a very inferior class of men—frequently (it is to be feared) not even in holy orders, and seldom licensed by the bishop. It was attempted to provide for this and other abuses by the 48th canon of 1603, which is as follows:—"No curate or minister shall be permitted to serve in any place without examination and admission of the bishop of the diocese, or ordinary of the place, having episcopal jurisdiction, in writing under his hand and seal, having respect to the greatness of the cure and meetness of the party. And the said curates and ministers, if they remove from one diocese to another, shall not be by any means admitted to serve without testimony of the bishop of the diocese, or ordinary of the place, as aforesaid, whence they came, in writing, of their honesty, ability, and conformity to the ecclesiastical laws of the Church of England. Nor shall any serve more than one church or chapel upon one day, except that chapel be a member of the parish church or united thereunto, and unless the said church or chapel, where such a minister shall serve in two places, be not able, in the judgment of the bishop or ordinary, as afore-

said, to maintain a curate." But this proved insufficient to remedy the evil, and Parliament was obliged to legislate on the subject in 13 Ann. ch. 11. This Act declared that no substitute for a non-resident beneficed clergyman should serve in any place without the examination and admission of the bishop of the diocese; and assigned to the curate so licensed a stipend not exceeding fifty, and not less than twenty pounds a year. This was the first statute in which curates were in any way recognised, and its practical effect was to give statutory force to the canon.

In the present day, it is the almost invariable practice for clergymen to serve for a year or more in some curacy, even when they become beneficed early in their clerical life; the only exceptions being fellows of colleges, who have the doubtful privilege of being ordained on the title of their fellowships, and then of taking college livings without necessarily having any experience of parochial work.

Whether the curate is entering on his duties contemporaneously with receiving orders, or is changing from one curacy to another, the same steps have to be taken for obtaining the bishop's licence, and these will now be mentioned in order.

A "nomination" will first be required from the beneficed clergyman whose curate he is to be. Where the incumbent is resident on his benefice, the following is the form of this nomination:— [PAPER 1.] **Nomination to Curacy.**

"To the Right Reverend Lord Bishop of .
"I, *G. H.*, of , in the county of , and your lordship's diocese of , do hereby nominate

E. F., bachelor of arts (*or other degree*), to perform the office of a curate in my church of aforesaid; and do promise to allow him the yearly stipend of , to be paid by equal quarterly payments. And I do hereby state to your lordship, that the said *E. F.* intends to reside in the said parish, in a house (*describe its situation, so as clearly to identify it*) distant from my church mile; and that the said *E. F.* does not serve any other parish, as incumbent or curate; and that he has not any cathedral preferment or benefice, and does not officiate in any other church or chapel.

"Witness my hand this day of , in the year of Our Lord one thousand eight hundred and .

"G. H."

"I, *G. H.*, Incumbent of , in the county of *bonâ fide* undertake to pay to *E. F.*, of in the county of , the annual sum of pounds, as a stipend for his services as curate; and I, *E. F.*, *bonâ fide* intend to receive the whole of the said stipend.

"And each of us, the said *G. H.* and *E. F.*, declare that no abatement is to be made out of the said stipend in respect of rent or consideration for the use of the glebe-house; and that I, *G. H.*, undertake to pay the same, and I, *E. F.*, intend to receive the same, without any deduction or abatement whatsoever.

"G. H.

"E. F."



If the incumbent is non-resident, the nomination form is as follows:—

"To the Right Reverend , Lord Bishop of .

"I, *G. H.*, of , in the county of , and your lordship's diocese of , do hereby nominate *E. F.*, bachelor of arts (*or other degree*), to perform the office of a curate in my church of aforesaid; and do promise to allow him the yearly stipend of , to be paid by equal quarterly payments, with the surplice fees, amounting to pounds per annum (*if they are intended to be allowed*), and the use of the glebe-house, garden, and offices which he is to occupy (*if that be the fact; if not, state the reason, and name where, and at what distance from the church, the curate purposes to reside*); and I do hereby state to your lordship, that the said *E. F.* does not serve in any other parish, as incumbent or curate; and that he has not any cathedral preferment or benefice, and does not officiate in any other church or chapel; that the net annual value of my said benefice, estimated according to the Act 1 & 2 Victoria, ch. 106, §§ 8 & 10, is , and the population thereof, according to the latest returns of population made under the authority of Parliament, is ; that there is only one church belonging to my said benefice (*if there be another church or chapel, state the fact*); and that I was admitted to the said benefice on the day of , 18 .

"Witness my hand, this day of , in the year of Our Lord 18 .

"G. H."

"I, *G. H.*, Incumbent of , in the county of , *bonâ fide* undertake to pay to *E. F.*, of , in the county of , the annual sum of pounds as a stipend for his services as curate; and I, *E. F.*, *bonâ fide* intend to receive the whole of the said stipend.

"And each of us, the said *G. H.* and *E. F.*, declare that no abatement is to be made out of the said stipend in respect of rent or consideration for the use of the glebe-house; and that I, *G. H.*, undertake to pay the same, and I, *E. F.*, intend to receive the same, without any deduction or abatement whatsoever."[1]

[PAPER 2.] **Letters of Orders.**

The curate's letters of orders, both deacon's and priest's, must be sent to the bishop with this nomination; but these are, of course, in the bishop's hands already, if the ordination and the entrance on the curacy are contemporaneous.

[1] The amount of stipend payable by resident incumbents to their curates is entirely a matter of private arrangement. Those payable by non-resident incumbents are regulated by 1 & 2 Vict. ch. 106, § 85, as follows:—

1. In no case less than 80*l.* per annum, or than the whole value of the benefice, if the latter is less than 80*l.*
2. If population numbers 300, not less than 100*l.*
3. „ „ 500, „ „ 120*l.*
4. „ „ 750, „ „ 135*l.*
5. „ „ 1000, „ „ 150*l.*

If the annual value in either of the four latter cases be less than the sums named, the stipend is to amount to not less than the whole value. But by §§ 91 & 92, certain deductions are allowed; and some exceptional cases are likewise provided for by §§ 86, 87, and 89.

In the case of a sequestrated benefice, the stipends payable to one

There must also be sent letters testimonial from three beneficed clergy, similar to those used by candidates for orders, but varied in form, as follows:— [PAPER 3.] **Letters Testimonial.**

"To the Right Reverend , Lord Bishop of .

"We, whose names are hereunder written, testify and make known that *E. F.*, clerk, bachelor of arts (*or other degree*), of college, in the university of , nominated to serve the cure of , in the county of , hath been personally known to us for the space of three years last past; that we have had opportunities of observing his conduct; that during the whole of that time we verily believe that he lived piously, soberly, and honestly, nor have we at any time heard anything to the contrary thereof; nor hath he at any time, as far as we know or believe, held, written, or taught anything contrary to the doctrine or discipline of the Church of England; and, moreover, we believe him in our consciences to be, as to his moral conduct, a person worthy to be licensed to the said curacy.

"In witness whereof we have hereunto set our

or more curates are regulated by 34 & 35 Vict. ch. 45, § 1, which enacts that they shall not exceed, in the whole, the following sums:

1. If population does not exceed 500, stipend, 200*l.*
„ exceeds 500, but not 1000, „ 300*l.*
„ „ 1000, „ 3000, „ 500*l.*
„ „ 3000, „ 600*l.*

Provided that the stipend or stipends so payable shall not exceed, in the whole, two-thirds of the annual value of the benefice.



hands this day of , in the year of Our Lord one thousand eight hundred and .

"A. B. .
"C. D. .
"I. K. ."

The same rule as to countersignature by the bishop applies in this case as in the former. [See page 194.]

Subscription and oaths.

Before the licence is granted, the curate has to make and subscribe the Declaration of Assent, and to take the oaths of allegiance to the sovereign, and of canonical obedience to the bishop, as in the case of ordination. [See page 200.]

The licence is then issued under the hand and seal of the bishop, in the following form:—

" by Divine permission Bishop of , to our beloved in Christ , clerk, master of arts, greeting. We do by these presents give and grant unto you, in whose fidelity, morals, learning, sound doctrine, and diligence we do fully confide, our licence and authority to perform the office of
A. stipendiary assistant curate in the parish church
(*L.S.*) of , in the county of , within our diocese
B. and jurisdiction, in reading the common prayers, and performing other ecclesiastical duties belonging to the said office, according to the Form prescribed in the Book of Common Prayer, made and published by authority of Parliament, and the canons and constitutions in that behalf lawfully



established and promulgated, and not otherwise or in any other manner (you having first before us subscribed the articles, taken the oaths, and made and subscribed the declaration, which in this case are required by law to be subscribed, made, and taken. And we do by these presents assign unto you the yearly stipend of pounds, to be paid quarterly, for serving the said cure.

"And you are to reside in the parish.

"In witness whereof we have caused our seal which we use in this case to be hereto affixed. Dated the day of , in the year of Our Lord one thousand eight hundred and seventy- , and in the year of our consecration."

This licence is binding upon both the incumbent and the curate, the nomination and licence having the force of a contract, which can only be dissolved by either after due notice to the other, and similar notice must also be given by either party to the bishop. If the incumbent wishes to dissolve the contract, he is required to give six months' notice to his curate and to obtain the leave of the bishop. The curate is required to give three months' notice only. It is usually assumed that the notice by the curate to the bishop is also the asking of the bishop's permission to dissolve the contract, though it is not at all clear that the bishop could, by refusing his consent, compel the curate to continue in his curacy. The bishop may, if he please, dispense with all

The licence a contract.

notice from the curate, the provision of 1 & 2 Vict. ch. 106, § 97, running: "And be it enacted, that no curate shall quit any curacy to which he shall be licensed until after three months' notice of his intention given to the incumbent of the benefice, and to the bishop, unless with the consent of the bishop, to be signified under his hand."

The bishop also has authority to revoke or cancel a curate's licence, subject to an appeal to the archbishop. The following is the provision of the Act just quoted on this point: "The bishop shall have power, after having given to the curate sufficient opportunity of showing reason to the contrary, to revoke summarily, and without further process, any licence granted to any curate,[1] and to remove such curate, for any cause which shall appear to such bishop to be good and reasonable: provided always, that any such curate may, within one month after service upon him of such revocation, appeal to the archbishop of the province, who shall confirm or annul such revocation as to him shall appear just and proper." [1 & 2 Vict. ch. 106, § 98.] There is no appeal from the archbishop's

[1] In Poole *v.* The Bishop of London, a doubt was suggested to the Privy Council whether this clause applied to curates of resident incumbents. Their lordships ruled that this was "a point not material to be considered; for if the appellant does not come within that clause, he certainly comes within the 6th section of 36 Geo. III. ch. 83, to which the same principles apply."

This section has now been repealed by the Statute Law Revision Act, 1871. It has since been held that the provisions of 1 & 2 Vict. ch. 106, § 98, apply to curates of n on-resident incumbents. [Mr. Baddeley's case, Phillimore's *Eccl. Law*, p. lxx.]

decision: this point was ruled by the Privy Council, in Poole *v.* The Bishop of London, in the year 1861. [14 Moore, P. C., p. 262.] The hearing of such an appeal is, however, required to be of a real and formal character: and when Archbishop Sumner tried to settle the appeal in the Poole case by a letter, in which he said that he had read the petition of appeal and the proceedings, and agreed with the bishop, the Court of Queen's Bench issued its mandamus to him, "to hear the said appeal and decide the merits thereof." [Reg. *v.* Archbishop of Canterbury, 28 L. J. Q. B. 184.] At the same time, it must be borne in mind that it was afterwards alleged by Lord Cranworth, in giving the reasons for the Privy Council's final decision on the case, that the appeal to the archbishop "is not an appeal as between litigant parties," but "a reasonable safeguard provided by the Legislature to prevent hardship from a hasty or erroneous exercise of discretion."

Upon the vacation of a benefice, by death or otherwise, the deputy of the late incumbent does not cease to be curate of the benefice. If the new incumbent give him six weeks' notice to quit, at any time within six months of his institution, the curate is dismissed; but otherwise, his licence still holds good as if there had been no change of incumbent.

It is believed that a curacy determines by the institution of the clergyman holding it to a benefice; but no decision has been given upon the point, and in a disputed case a bishop set the curate free by cancelling his licence.

[The details of the Pluralities Act, as they relate to

non-resident incumbents, are so voluminous, and the necessity for reference to them is so comparatively rare, that they are here omitted. They (and, in fact, almost all the statute law now in force relating to curates) will be found in twenty-seven sections of the rather cumbrous statute in question—viz., 1 & 2 Vict. ch. 106, §§ 75–102.]

Chapter III.

THE CURE OF SOULS.

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THE bishop of each diocese being ultimately responsible for the cure of souls in every part of it, the ultimate right and duty of providing for that cure of souls in detail rests with him; and thus the right and duty of nominating the clergy of each parish is, theoretically, a right and duty that belongs to the bishop of the diocese in which the parish is situated.

Episcopal responsibility for cure of souls,

§ 1. *Patronage.*

But founders of churches claiming to have a voice in the appointments of the clergy who were to minister in them, a "jus patronatûs" became recognised, which, belonging originally to founders, was gradually extended to others, who in some way or another came to stand in the place of founders. Thus

and the jus patronatûs.

the initial authority in the appointment of a clergyman to the cure of souls in any parish is, in a majority of cases, taken out of the hands of the bishop, and placed in those of the "patron," that patron being the Crown, or in some cases a person holding a particular office under the Crown, ecclesiastical corporations other than the bishop of the diocese, and private persons, who may either have the patronage of their own right and to appoint whom they please, or may be trustees appointed for some specific purpose.[1] In many cases the patron is the owner of most of the land which forms the parish, and represents the person or persons who originally endowed it with tithes or other property for spiritual objects. Hence the patronage of livings in English dioceses is, to a large extent, lay patronage.

Lay patrons.

This right of patronage is, however, not of an absolute but of a conditional character, the conditions being those which regard the fitness of the person nominated; and this fitness is to be decided (subject to the right of appeal) by the bishop. Hence patronage takes the form of "presentation," the patron presenting to the bishop the person whom he has nominated to become rector or vicar of the parish to the benefice of which he claims the right of advowson. If the person so

Presentation.

[1] The title of "patron" has arisen from some unexplained confusion respecting the old Roman law terms "patronus" and "advocatus;" and thus, although the person appointing is called a "patron," the right of appointment is called the right of "advowson," *jus advocationis*. [Burn's *Eccl. Law*, Phill. Ed. i. 5 d.; Sir R. Phillimore, *Eccl. Law*, 330, 331.] Perhaps the person appointing was regarded as "patronus" of the parishioners in the old sense.



presented is approved of by the bishop, the latter eventually *institutes* him to the spiritual cure of souls, and causes him to be *inducted* to the temporal possession of the goods and income annexed to the cure of souls. Perpetual curates are presented in the same manner to the bishop, and are by him licensed to their curacy.

Institution to spirituals. Induction to temporals.

When the bishop of the diocese is himself the patron of a living within his diocese, he institutes the clergyman whom he nominates to it, without any intermediate act of presentation between himself as patron and himself as bishop, the act of institution being then termed a collation.[1]

Collation.

The right of patronage may be inherited or purchased; but it cannot be exercised by lunatics, or Roman Catholics; and, like all other real estate, it could not be held by aliens till the recent statute, 33 and 34 Vict. ch. 14, § 2.

Who may not be patrons.

A bankrupt still retains the right of nomination as well as presentation, and it cannot be exercised by his trustee in bankruptcy. [32 & 33 Vict. c. 71, § 18.]

The patronage of lunatic patrons is exercised by the

[1] In the very anomalous case of "donatives"—a class of benefices which is in most dioceses in process of extinction—neither presentation, institution, nor induction are required; the clergyman taking possession of a donative under a deed of gift from the patron, and owning only a partial obedience to the bishop of the diocese, but being subject to proceedings by him under the Acts for the residence and other discipline of the clergy. A donative does not lapse for want of presentation to the bishop; but the bishop, it is said, can compel the patron to fill up the benefice when vacant.

Lord Chancellor. The patronage of Roman Catholic patrons is exercised by the University of Oxford in the case of benefices in one half of England, and by the University of Cambridge in the case of benefices in the other half. [3 James I. ch. 5, § 13; 1 W. & M. sess. 1., ch. 26; 13 Ann. ch. 13; 11 Geo. II. ch. 17, § 5.] But if Roman Catholics are joint patrons with other persons who are not Roman Catholics, then the whole right of patronage rests with those who are not Roman Catholics, and does not pass to the universities.[1] [Edwards *v.* Bishop of Exeter, 5 Bingh. N. C. 652.]

[1] The division of the counties between the Universities of Oxford and Cambridge is as follows :—

OXFORD.

Oxford.	Worcestershire.	Northamptonshire.
Kent.	Staffordshire.	Pembrokeshire.
Middlesex.	Warwickshire.	Carmarthenshire.
Sussex.	Wiltshire.	Brecknockshire.
Surrey.	Somersetshire.	Monmouthshire.
Hampshire.	Devonshire.	Cardiganshire.
Berkshire.	Cornwall.	Montgomeryshire.
Buckinghamshire.	Dorsetshire.	The City of London.
Gloucestershire.	Herefordshire.	

CAMBRIDGE.

Essex.	Leicestershire.	Cumberland.
Herefordshire.	Derbyshire.	Westmoreland.
Bedfordshire.	Nottinghamshire.	Radnorshire.
Cambridgeshire.	Shropshire.	Denbighshire.
Huntingdonshire.	Cheshire.	Flintshire.
Suffolk.	Lancashire.	Carnarvonshire.
Norfolk.	Yorkshire.	Anglesey.
Lincolnshire.	Durham.	Merionethshire.
Rutland.	Northumberland.	Glamorganshire.

The right of patronage also passes from the ordinary patron to the Crown, when a benefice has been vacated by the promotion of its incumbent to a bishopric.[1]

The "next presentation" to a benefice may be assigned by the patron to another person, for a consideration, in money or otherwise, provided the purchaser is not in holy orders, and provided the benefice is not vacant at the time of assignment. The purchase of advowsons and next presentations by clergymen was forbidden by the canon law, and those who thus purchased them were deprived. This rule of the canon law is confirmed and enforced, as regards next presentations, by the statute law, an Act of Queen Anne enacting as follows:—"Whereas some of the clergy have procured preferments for themselves, by buying ecclesiastical livings, and others have been thereby discouraged; it is enacted, that if any person shall, for any sum of money, reward, gift, profit, or advantage, directly or indirectly, or for or by reason of any promise, agreement, grant, bond, covenant, or other assurance of or for any sum of money, reward, gift, profit, or benefit whatsoever, directly or indirectly, in his own name, or in the name of any other person, take, procure, or accept the next avoidance of or presentation to any benefice with cure of souls, dignity, prebend, or living ecclesiastical, and shall be presented or collated thereupon: every such presentation or collation, and every admission, institution, investiture, and induction upon the same, shall

Next presentation.

[1] Such a diversion of patronage to the Crown does not interfere with any agreement as to "next presentation," leaving the agreement in full force for the turn next after the Crown presentation.

be utterly void, frustrate, and of no effect in law, and such agreement shall be deemed a simoniacal contract; and it shall be lawful for the Queen, her heirs and successors, to present or collate unto, or give or bestow, every such benefice, dignity, prebend, and living ecclesiastical, for that one time or turn only; and the person so corruptly taking, procuring, or accepting any such benefice, dignity, prebend, or living, shall thereupon and from thenceforth be adjudged a disabled person in law to have and enjoy the same, and shall also be subject to any punishment, pain, or penalty, limited, prescribed, or inflicted by the laws ecclesiastical, in like manner as if such corrupt agreement had been made after such benefice, dignity, prebend, or living ecclesiastical, had become vacant—any law or statute to the contrary in anywise notwithstanding. [13 Ann. ch. 11, § 2.]

This applies strictly to the purchase of next presentations only, the purchase of a life estate in the advowson not being within the statute. [Walsh *v.* Bishop of Lincoln, L. R. 10 C. P. p. 818.]

Laymen and lay corporations may buy and sell church patronage to any extent, whether in the form of advowson or of next presentation.

§ 2. *Presentation.*

Presentation by word of mouth.

The nomination and act of presentation might formerly be effected by an individual patron *vivâ voce*, by his declaring, in the presence of the ordinary, that he presented such and such a person to the ordinary for institution. It was always necessary, however, that a corporation composed of several

or many persons should make the presentation in the form of a written instrument under their common seal. The written form is now the usual form of presentation, and since presentations are subject to stamp-duty it is probably the only legal form. The instrument is worded in such terms as the following:— **By written instrument.**

"To the Right Reverend Father in God, *R.* Lord Bishop of , or in his absence to his vicar-general in spirituals, or to any other person having, or who shall have, sufficient authority in this behalf: I, *Sir W. P.*, Baronet, true and undoubted patron of the rectory of the parish church of [*or*, of the vicarage of] , in the county of , and in your diocese of , now vacant by the death [*or* resignation, *or otherwise as the case shall be*] of *A. B.*, the last incumbent there, do present unto you *C. D.*, clerk, Master of Arts, humbly requesting that you will be pleased to admit the said *C. D.* to the said church, and to institute and cause him to be inducted into the same, with all its rights, members, and appurtenances, and to do and execute all other things in this behalf which shall belong to your episcopal office. In witness whereof, I have hereunto set my hand and seal, the day of , in the year 18 ."[1]

[PAPER 1.] **Presentation.**

[1] The stamp-duties on instruments of presentation are as follows: Appointment, whether by way of donation, presentation, or nomination; and admission, collation, or institution to, or licence

A lay patron may revoke this instrument and present another clerk, if he do it before the clerk first presented is instituted: and the Crown can revoke even after institution, if before induction. A lay patron may also present a second clerk without revoking his first presentation, in which case the bishop himself decides which of the persons presented he will institute to the benefice. But this privilege does not belong to ecclesiastical patrons; nor, perhaps, to colleges as quasi-ecclesiastical patrons.

Revocation of the presentation.

§ 3. *Admission.*

If the patrons present to the bishop a person who is not in priest's orders, or who is of immoral character, or

to hold, any ecclesiastical benefice, dignity, promotion, or any perpetual curacy.

In England:

If the yearly value thereof exceeds,—	£	s.	d.
50*l.* and does not exceed 100*l.*	1	0	0
100*l.* „ „ 150*l.*	2	0	0
150*l.* „ „ 200*l.*	3	0	0
200*l.* „ „ 250*l.*	4	0	0
250*l.* „ „ 300*l.*	5	0	0
300*l.*	7	0	0
And also (if such yearly value exceeds 300*l.*) for every 100*l.* of such yearly value over and above 200*l.*, a further duty of	5	0	0

EXEMPTIONS.

Admission, collation, institution, or licence proceeding upon a duly-stamped donation, presentation, or nomination. [33 & 34 Vict. ch. 97.]

The annual value must be certified by the Ecclesiastical Commissioners before the Inland Revenue Office will affix the stamp.



who is deficient in learning, or who is heretical in belief, the bishop may refuse to institute him.

This rule of the Church is enforced by the 39th canon of 1603, which enacts that: "No bishop shall institute any to a benefice, who hath been ordained by any other bishop, except he first show unto him his letters of orders, and bring him a sufficient testimony of his former good life and behaviour, if the bishop shall require it; and, lastly, shall appear, upon due examination, to be worthy of his ministry."

[1.] That the person presented is in priest's orders is to be shown by his letters of orders, or by a certified copy of the register of his ordinations, if the original documents are lost. [PAPER 2.] **Letters of Orders.**

[2.] Moral character is usually certified by the letters testimonial of three beneficed clerks of the diocese, or by such letters testimonial countersigned by the bishop of the diocese in which the certifying clerks are beneficed, if not in that of the bishop to whom the certificate is addressed. The form of these is the same as in the case of similar testimonials for orders. [See page 193.] In the case of Bishop of Exeter *v.* Marshall [L. R. 3, H. L. p. 17], it was decided that the bishop could not insist upon these testimonials. [PAPER 3.] **Letters testimonial.**

[3.] Learning is generally taken for granted, having been, in fact, certified by the possession of an university degree, and by the examinations for deacon's and priest's orders. But it is not always so taken for granted, the bishop sometimes examining the presentee, or causing him to be examined. By a modern statute the Bishops of

St. Asaph, Bangor, Llandaff, and St. David's may, subject to an appeal to the archbishop, refuse institution to clergymen who cannot perform Divine Service and preach in the Welsh language. [1 & 2 Vict. ch. 106, § 104.]

[4.] Cases of proveable heterodoxy are rare, and the only modern case in which heterodoxy has been openly alleged as a bar to institution was that of Mr. Gorham, whom Bishop Phillpotts of Exeter refused to institute to Brampford Speke, in 1847 (after examination), on that ground. From this refusal the presentee appealed; but, having submitted himself for examination, the Privy Council were "relieved from the necessity of considering whether he could or could not lawfully have declined to submit to such a course of examination." And, although it is generally taken for granted that examination into the orthodoxy of the presentee is included in the terms of the 39th canon, the expression "worthy of his ministry" is sufficiently vague to leave the question open to further discussion.

Limits of bishop's refusal.

If, for any of the foregoing causes, the bishop refuses institution to the clerk presented to him by the patron, he should do so within twenty-eight days after the presentation has been made, under the 95th canon of 1603, which is as follows: "Albeit by former constitutions of the Church of England, every bishop hath had two months' space to inquire and inform himself of the sufficiency and qualities of every minister, after he hath been presented unto him to be instituted into any benefice; yet, for the avoiding of some inconveniences, we do now abridge and reduce the said two months unto



eight-and-twenty days only. In respect of which abridgment we do ordain and appoint, that no double quarrel shall hereafter be granted out of any of the archbishop's courts at the suit of any minister whosoever, except he shall first take his personal oath that the said eight-and-twenty days at the least are expired, after he first tendered his presentation to the bishop, and that he refused to grant him institution thereupon; or shall enter bonds with sufficient sureties to prove the same to be true; under pain of suspension of the granter thereof from the execution of his office for half a year *toties quoties* (to be denounced by the said archbishop), and nullity of the double quarrel aforesaid, so unduly procured, to all intents and purposes whatsoever. Always provided, that within the said eight-and-twenty days the bishop shall not institute any other to the prejudice of the said party before presented, *sub pœna nullitatis.*"

The presentee may then appeal to the archbishop, from whose Court a further appeal lies to the Queen in Council, whose decision is final. **Appeal from it.**

If the patron considers himself aggrieved by the refusal of his clerk, his remedy is by action of *quare impedit* in the temporal Courts.

In all ordinary cases the bishop approves of the person nominated and presented to him by the patron, and such approval is the admission of the person so presented to institution; but no formal notice of such admission is given, and practically the appointment of a time for institution signifies that admission has been allowed.

§ 4. *Institution.*

Institution is the act by which the bishop, who holds the cure of souls for the whole of his diocese, assigns a portion of that cure of souls to a rector or vicar of a parish within it, as his deputy. So the words formerly used by the bishop in giving institution were: "Instituo te rectorem talis ecclesiæ cum curâ animarum; et Accipe curam, tuam et meam." [Gibson's *Cod. tit.* xxxiv. ch. 5, note *l.*]

Institution, what it is.

Before this institution to the cure of souls is given by the bishop, he is to cause the presentee to make the declaration of assent, to take the oaths of allegiance and of canonical obedience, and to make the declaration against simony, as ordered by Canon 36 of 1865, and by the Clerical Subscription Act [28 & 29 Vict. ch. 122]. The three former of these are the same as are required from persons about to be ordained deacon or priest, and will be found at pages 199 & 200. The declaration against simony is as follows:—

Oaths and declarations.

> "I, *A. B.*, solemnly declare, that I have not made, by myself or by any other person on my behalf, any payment, contract, or promise of any kind whatsoever, which, to the best of my knowledge or belief, is simoniacal, touching or concerning the obtaining the preferment of ; nor will I at any time hereafter perform or satisfy, in whole or in part, any such kind of payment, contract, or promise made by any other without my knowledge or consent."



A certificate under the bishop's hand and seal is given, that these declarations have been made and oaths taken, which is to be kept, as a record of the fact, by the person instituted.

Institution is given, according to modern custom, by the bishop, or his commissary, reading an instrument drawn up under his seal—the clergyman to be instituted kneeling down before the bishop, and holding the seal in his hand. The words of the document are as follows; the bishop, before reading them, making the solemn invocation, "In the Name of the Father, and of the Son, and of the Holy Ghost:"—

"*A.*, by Divine permission Lord Bishop of *B.*, to our well-beloved in Christ, *C. D.*, clerk in Holy Orders, M.A. Greeting. We admit you to the *Rectory* of the Parish Church of , in the county of , within our diocese and jurisdiction, now vacant by the [*death* or *resignation*] of *E. F.*, clerk in Holy Orders, the last incumbent there, to which you are presented to Us by , the true and undoubted patron thereof, in full right (as it is asserted). And we do hereby duly and canonically institute you in and to the said *Rectory*, and invest you with all and singular the rights, members, and appurtenances thereto belonging, You having first, in Our presence, made and subscribed the Declarations, and taken the Oaths provided to be made, provided, and taken, and also having first taken the Oath of Canonical Obedience to Us and our Successors, Bishops of

in all things lawful and honest. And we do by these Presents commit unto you the cure and government of the Souls of the Parishioners of the said Parish, and do authorize you to preach the Word of God in the Parish Church aforesaid, Saving always to Us and our Successors our Episcopal Rights, and the Dignity and Honour of our Cathedral Church of . In testimony whereof We have set our hand, and caused our Episcopal Seal to be affixed to these presents. Dated the day of , in the year of Our Lord one thousand eight hundred and , and in the year of our *Consecration.*" *A* (*L.S.*) *B*

A similar form is used where the bishop is himself the patron of the benefice; but it then becomes a collation instead of an institution, and is worded accordingly.

The bishop's register contains an exact record of every institution or collation, and can be referred to as a legal authority, if the instrument itself is lost or destroyed.

By 1 & 2 Vict. ch. 106, § 11, institution to a benefice vacates any benefice previously held, unless the plurality be legalized. The vacation of a Curacy is not so certain. See p. 223.

§ 5. *Induction.*

The legal rights of a clergyman who has been instituted to the cure of the souls of any parish are completed by his induction to the real and corporal possession of the benefice. Institution may take place anywhere, and not necessarily even in any place within the diocese of the

bishop instituting; though the clerk must be instituted *in propria persona.* Induction, however, must take place in the church of the benefice, the clerk to be inducted appearing either *in propria persona,* or by his lawful proctor.

Induction takes place in obedience to a mandate of the bishop, issued to the archdeacon of the archdeaconry in which the benefice is situated.[1] The archdeacon either inducts in person, or he issues a precept to some deputy or deputies, not necessarily naming them, but permitting the incumbent to select some neighbouring clergyman. The form of this precept for induction is as follows:—

Archdeacon to induct.

"The Venerable Archdeacon of the archdeaconry of , To all and singular Rectors, Vicars, Chaplains, Curates, and Clerks, whomsoever and wheresoever, in and throughout our whole archdeaconry. Greeting.

"WHEREAS the Right Reverend Father in God , by Divine permission Lord Bishop of , hath admitted the Reverend , clerk, M.A., to the *Rectory* and Parish of , in the county of , and within our said Archdeaconry (vacant by the of , clerk, the last Incumbent thereof), to which he was presented by , the true and undoubted Patron thereof (as is asserted), and hath duly and canonically instituted him in and to the said *Rectory,* and invested him with all and singular

[1] In some places, by prescription, the dean and chapter induct, instead of the archdeacon.

the rights, members, and appurtenances thereunto belonging, and hath charged and strictly enjoined us to induct or cause the said , or his lawful Proctor for him and in his name, to be inducted into the real, actual, and corporal possession of the said *Rectory*, and of all and singular the rights, members, and appurtenances thereto belonging; We do hereby authorize and empower you jointly and severally to induct, or cause the said , or his lawful Proctor for him and in his name, to be inducted into the real, actual, and corporal possession of the said and Parish Church of , and of all and singular the rights, members, and appurtenances thereto belonging: And what you shall do in and concerning the premises you or whosoever of you that shall execute this mandate are duly to certify us or our official when you shall be lawfully required so to do.

"Given at , under our Archidiaconal Seal, this day of , in the year of Our Lord

Deputy Registrar.

[*On the back.*]

"On the day of in the year of Our Lord one thousand eight hundred and , the within-named was duly inducted into the real, actual, and corporal possession of the within-mentioned *Rectory*, and of all and singular the rights, members, and appurtenances thereto belonging, in obedience to the within mandate, By me , vicar of , in the presence of us ."

The traditional custom of induction is for the person inducting to place the hand of the person to be inducted upon the key of the church-door, or on some part of the church itself, at the same time reading the above document. After which the inductor opens the church-door, and causes the person inducted to enter the church alone, and to toll one of the bells as a public proclamation that he is in possession of the benefice. But any form of corporal or manual contact with any part of the church or churchyard, effected by the clerk inducted through the instrumentality of the inductor, is sufficient. The above endorsement is then signed by the inductor and the witnesses.

Accompanying ceremony.

The effect of induction is to make the person already instituted to the cure of souls the actual and lawful possessor of the freehold of the church, churchyard, rectory-house, glebe, &c., and of all legal rights and profits belonging to the incumbent of the benefice.[1]

Effect of induction.

§ 6. *Reading In.*

It is provided by the law that every clergyman entering on the cure of souls, whether for the first time or not, shall make a public declaration of his faith, and give to the people among whom he is placed a pledge of his

[1] As the interest of the vacating incumbent terminates with his death, or with his avoidance of the benefice, the succeeding incumbent is entitled to the income of the benefice from that day, although he may not be inducted for some months afterwards. But deduction has to be made for the expenses attending provision for the care of the parish, &c. during the interval.



orthodox conformity to the rules and tenets of the Church of England. This is to be done, however, not in terms of his own choice, but in the terms set forth in the Book of Common Prayer and in the Thirty-nine Articles of Religion.

This was enacted under the severe penalty of forfeiture of the benefice by the Act of Uniformity [14 Car. II., ch. 4]. And now the Clerical Subscription Act [28 & 29 Vict. ch. 122, § 7] provides as follows: "Every person instituted or collated to any benefice with cure of souls, or licensed to a perpetual curacy, shall, on the first Lord's-day on which he officiates in the church of such benefice or perpetual curacy, or on such other Lord's-day as the ordinary may appoint and allow, publicly and openly, in the presence of the congregation there assembled, read the Thirty-nine Articles of Religion, and immediately after reading the same make the said Declaration of Assent, adding, after the words 'Articles of Religion' in the said declaration, the words, 'which I have now read before you.'

Enacted by Act of Uniformity and Clerical Subscription Act.

"If any person instituted, collated, or licensed as aforesaid, wilfully fails to comply with the provisions of this section, he shall absolutely forfeit his benefice or perpetual curacy; but no title to present by lapse shall accrue by any such forfeiture, until the ordinary has given six months' notice thereof to the patron."

This declaration of assent is like that made at his institution, but in the following slightly modified form:—

Declaration of assent.



"I do solemnly make the following declaration:

"I assent to the Thirty-nine Articles of Religion, *which I have now read before you*, and to the Book of Common Prayer; and of the ordering of Bishops, Priests, and Deacons. I believe the doctrine of the Church of England, as therein set forth, to be agreeable to the Word of God; and, in public prayer, and administration of the Sacraments, I will use the Form in the said book prescribed, and none other, except so far as shall be ordered by lawful authority."

A certificate that the new incumbent has so "read himself in" should be obtained by him in the following form, and preserved as a record of the fact:— **Certificate of reading in.**

"MEMORANDUM. That on Sunday, the day of , in the year of Our Lord one thousand eight hundred and , ——, rector [*or* vicar] of the rectory [*or* vicarage] of the parish church of , in the county of , and diocese of , did in his parish church of aforesaid, publicly and openly, in the presence of the congregation there assembled, read the Articles of religion, commonly called the Thirty-nine Articles, agreed upon in Convocation in the year of Our Lord 1562, and did, immediately after reading the same, make the following declaration of assent, viz.:—[*Here is to follow the declaration, as given above.*]

"Witness our hands the day and year above written—

_____ } *Churchwardens.*
_____ }

_____ } *Parishioners.*
_____ }

The profession of orthodoxy so made completes the series of formal steps by which a priest becomes settled in a parish as its rector or vicar having the cure of souls, and possessing all the rights, as to freehold and other matters, belonging to the benefice. Being thus established, he can only cease to lie under the obligations incurred, or to hold the privileges acquired, by removal to some other cure, by a formal act of voluntary resignation accepted by the bishop, by compulsory deprivation, or by death.

§ 7. *Residence.*

As a general rule, every rector or vicar is required to reside within his parish; and, even although there should be no house of residence annexed to the benefice, he can only lawfully reside elsewhere under the express licence of the bishop of the diocese. This rule of the Church is enforced under severe penalties by a statute of recent times [1 & 2 Vict. ch. 106], the 32nd section of which enacts as follows:—

"And be it enacted, that every spiritual person holding any benefice shall keep residence on his benefice, and in the house of residence (if any) belonging thereto; and if any such person shall, without any such licence or exemption as is in this Act allowed for that purpose, or unless he

shall be resident at some other benefice of which he may be possessed, absent himself from such benefice, or from such house of residence (if any) for any period exceeding the space of three months together, or to be accounted at several times in any one year, he shall, when such absence shall exceed three months and not exceed six months, forfeit one third part of the annual value of the benefice from which he shall so absent himself; and when such absence shall exceed six months and not exceed eight months, one half part of such annual value; and when such absence shall exceed eight months, two third parts of such annual value; and when such absence shall have been for the whole of the year, three fourth parts of such annual value."

The manner in which the penalties are to be recovered, and the application to be made of them for the improvement of the benefice, are exactly defined by the Act in question, but need not be here set forth.

Another and more usual mode of enforcing residence is by monition to reside, followed in the event of disobedience by sequestration of the benefice. [1 & 2 Vict. c. 106, § 84.]

But, under certain circumstances, the bishop of the diocese is empowered to grant a licence of non-residence. These may be generally stated as follows [1 & 2 Vict. ch. 106, § 43]:— **Lawful reasons for non-residence.**

[1.] When there is no house of residence within the parish.

[2.] When the house of residence is unfit for the residence of the incumbent, such unfitness not having been caused by his negligence, default, or other misconduct.

[3.] When the incumbent is incapable, through infirmity of mind or body, of fulfilling the duties of his cure.

[4.] The incumbent may also be licensed to reside in some other house within his parish, provided he keep the rectory or vicarage in proper repair.

[5.] He may also have a licence of non-residence, for six months only (renewable by permission of the archbishop of the province), in case of the dangerous illness of his wife, or of his child, provided the latter resides with him as part of his family.[1]

An incumbent of a parochial cure who is also member of a cathedral or collegiate body is permitted to reckon his residence at the cathedral or collegiate church of which he is a member as equivalent to residence in the parish of which he is incumbent, provided the whole term of his non-residence in the latter does not exceed five months in any one year, from the 1st of January to the 31st of December, including the residence at the cathedral.[2] In such a case no episcopal licence is necessary. [§ 39.]

In any case where a rector or vicar is entitled to a licence for non-residence, he must send in a petition[3]

[1] Special licences may be granted by the bishop, subject to the approval or disapproval of the archbishop, without whose sanction they have no force. In such special licences the reason for granting non-residence need not be stated.

[2] If *two* yearly terms of cathedral residence are kept between the above two days, they may, however, be reckoned as residence on the benefice, though exceeding five months in duration.

[3] The preamble of the petition may be in the following form :—

"To the Right Reverend , Lord Bishop of .

"The humble petition of the Reverend , rector of in the county of ,

to the bishop, containing the following particulars, or such of them as may be applicable to his case:— **Petition for non-residence.**

[1.] Whether he intends to perform the duties of his benefice in person; and if so, where, and at what distance from the church or chapel, he intends to reside.

[2.] What salary he proposes to give his curate, if he intends to employ one.

[3.] Whether such curate proposes to reside in the parish in which such benefice is situate.

[4.] If the curate does intend to reside, then whether in the house of residence belonging to the benefice, or in any and what other house.

[5.] If the curate does not intend to reside in the parish, then at what distance therefrom, and at what place, such curate intends to reside.

[6.] Whether such curate serves any other and what parish, and if so, whether it is as incumbent or curate; whether he has any and what cathedral preferment, or any and what benefice; or whether he officiates in any and what other church or chapel.

[7.] The annual value and the population of the benefice in respect of which any licence for non-residence is applied for.

[8.] The number of churches or chapels, if more than one, upon such benefice.

[9.] The date of his admission to his benefice. [§ 42.]

"SHEWETH,—

"That your petitioner is desirous to obtain your Lordship's licence for non-residence on his said benefice, on account of" [*stating the reason, &c., as above*].

If the bishop decline to grant the licence, the incumbent may appeal to the archbishop of the province within one month: a similar appeal being also allowed if the bishop revoke any licence for non-residence which he or his predecessor may have granted.

Appeal in case of refusal.

By the 50th section of the Act regulating non-residence, it is required that a copy of every licence for non-residence, and a statement in writing of the grounds of exemption, shall be transmitted by the spiritual person to whom such licence shall have been granted, or who may be exempted from residence, to the churchwardens or the chapel-wardens of the parish or place to which the same relates, within one month after the grant of such licence, or of his taking advantage of such exemption, as the case may be; and if he neglects so to transmit a copy of such licence or statement of exemption, he will lose all benefit of such licence; and until he shall have transmitted such statement, he will not be entitled to the benefit of such exemption.

§ 8. *Pluralities.*

The great abuse by which clergymen have been accustomed to hold several benefices with cure of souls has led to frequent legislation, which has reached its climax in the Pluralities Acts [1 & 2 Vict. ch. 106, and 13 & 14 Vict. ch. 98]. By the 1st section of the latter Act, it is enacted that no two benefices shall be held together, if the distance between them exceeds three miles by the nearest road; and that even then, one *of the two* must be under £100 in annual value. By the

Modern restrictions

4th section of the former Act, it is also enacted, that if the population of one parish exceeds three thousand, that of the other must not exceed five hundred. By the 5th section of the same Act, two benefices cannot be held together, even under the preceding circumstances, without a dispensation from the Archbishop of Canterbury.

It may be considered, therefore, that the holding of benefices *with cure of souls* in plurality is practically abolished, at least as a matter of profit or advantage to the clergy, and that these exceptional provisions look entirely to the advantage of the parishioners in certain possible exceptional cases.

practically abolish pluralities,

It is, however, still open to the clergy of cathedrals or collegiate churches, heads of colleges, and some other persons holding preferment which does not entail parochial duty, to hold a parish with cure of souls in conjunction with such preferment, under certain restrictions specified in the two before-named Acts.

except where there is not double cure of souls.

§ 9. *Resignation of a Benefice.*

The cure of souls, being received at the hands of the bishop of the diocese or his representative, can only be voluntarily given up by surrender into, and acceptance by, the same hands which committed it to the rector or vicar wishing to resign it. The latter must state to the bishop his reasons for wishing to resign, and it rests entirely with the bishop whether or not he will consent to accept the resignation. He cannot be compelled to accept

Reasons for resignation to be approved by the bishop.

it, any more than he can be compelled to ordain.[1] Supposing that he approves of the reasons, and permits the resignation to be made, the deed of surrender must be executed by the incumbent, or his proctor, in the presence of a notary public. It is then presented to the bishop, who, if he accepts it, declares his acceptance, and sends notice to the patron of the benefice that it is vacant. The avoidance dates from the bishop's acceptance.

Exchange of livings.

When two clergymen exchange livings, a deed of resignation is executed by each, in which there is a proviso making the resignation conditional on presentation to the other's benefice, and declaring it void if such presentation do not ensue.[2]

Engagement to resign.

Bonds of resignation are also permitted, whereby the clerk presented agrees to resign in favour of any one person mentioned, or in favour of one of two persons, if such persons are in a certain specified degree of relationship to the patron, or to one of the patrons. The law relating to these will be found in 9 Geo. IV. ch. 94. It is only necessary here to say that they are not actual deeds of resignation, but only agreements to resign, and that to be valid they

[1] But institution to another benefice at once releases the incumbent from that which he has previously held.

[2] It is very necessary that this proviso should be made. A recent case is known to the writer, in which a rector was persuaded by the bishop's legal secretaries to omit it, on the ground that it showed "want of confidence" towards the other parties concerned. The result was that the patron took advantage of the omission to eject the clergyman from a benefice worth about 400*l.* a year. But it may be doubted whether the act of the patron was legal.

must be executed before the presentation is sent to the bishop.

An Act of Parliament was passed in 1871, "to enable clergymen permanently incapacitated by illness to resign their benefices with provision of pensions."

By this Act [34 & 35 Vict. ch. 44], it is provided that any clergyman who has been an incumbent of one benefice continuously for seven years, and is incapacitated by mental or bodily infirmities from fulfilling his duties, may have a commission appointed to consider the fitness of his resigning; and if that commission report in favour of his resignation, he may, with the consent of the bishop and the patron (or, if that is refused, with the consent of the archbishop) resign the cure of souls into the bishop's hands, and have assigned to him, out of the benefice, a retiring-pension not exceeding one-third of its annual value, which is recoverable as a debt from his successor.

A clergyman so pensioned is still amenable to ecclesiastical discipline as if he had remained incumbent of his benefice: and if, being charged with offences that would involve suspension or forfeiture, he should be living abroad, he may be summoned to England by the bishop to answer the charge. [See APPENDIX III.]

Book IV.

PAROCHIAL LAY OFFICERS.

Chapter I.

CHURCHWARDENS.

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AS there is for every parish of the Church of England a clergyman, who is primarily responsible to the bishop and his subordinates for the due observance of ecclesiastical laws; so also, one or more laymen are appointed in every parish, to be primarily responsible, on behalf of the laity, to the bishop and his subordinates, as regards the rights and duties of parishioners in respect to ecclesiastical laws. These representative laymen are

called "Churchwardens" and "Sidesmen;" but the latter officers are of so little importance that they will only be occasionally mentioned.

I.—THE OFFICE OF CHURCHWARDEN.

The name of these parochial officers is derived from one of their duties, that which was originally the only duty belonging to the office—*i.e.*, the custody or guardianship of the church property belonging to each parish. In later times other duties accumulated upon churchwardens, so that they have become *ex officio* synodsmen or "sidesmen" —the proper lay representatives of their parishes at synods or visitations,[1] and *ex officio* overseers of the poor. [43 Eliz. ch. 2, § 1.] The duties of the office have been in some degree modified by the action of recent legislation, and hence some of its responsibilities lie dormant; but churchwardens are still the true representatives of the laity of their parishes in all ecclesiastical matters, both as regards rights and responsibilities.

[1] SIDESMEN.—These are mentioned in several of the canons of 1603, and in statute 5 & 6 Will. IV. ch. 62, § 9, where they are, apparently, always regarded as "assistants" to the churchwardens in both their capacities. [Canon 90.] Such assistants are only appointed in a few large parishes, where they usually act as deputy churchwardens in outlying townships.

The office of churchwarden, as guardian of the goods of the church, dates from the later part of the Middle Ages, when the duty of providing for the repairs of the nave, and of furnishing the utensils for Divine Service, finally settled on the parishioners. The synodsmen are of much more ancient date, being derived from the custom observed at episcopal synods of calling upon certain grave laymen of the diocese to report on oath to the bishop respecting its moral condition. [Ayliffe's *Parergon*. p. 516.]

§ 1. *Persons eligible, disqualified, or exempt.*

Resident householders.

The persons primarily eligible for the office of churchwarden are the resident householders of the parish; and according to ancient custom habitual residence was necessary, as a person non-resident would not be present in church to carry out the duties of maintaining order in Divine Service, and of presenting absentees. [Gibs. *Cod.* p. 215.] But it has been ruled in modern times that householders who are not habitually resident are also eligible if they are habitually occupiers—as in the case of men who occupy one house for business, but reside in another.[1] [Brook *v.* Owen, 3 Phill. 517, n.; Stephenson *v.* Langton, 1 Hagg. Consist. 379.] Partners in business are thus eligible for the parish in which the joint business is carried on. This eligibility would, of course, not extend to shareholders in incorporated companies; and probably would be limited, in the case of such large non-registered companies as still exist, to those members who personally and habitually take part in such business. Persons occupying the houses of others, as agents or servants only, are not reckoned as householders: but poverty does not make a person ineligible.

Non-resident householders.

Persons disqualified.

There are a few classes of persons, however, who are absolutely disqualified from election. Such are Jews, minors, aliens (even though naturalised), and persons who have been convicted of felony, fraud, or

[1] Women householders are liable to be called upon to serve the office of churchwarden; but they are only burdened with it in rare and exceptional cases. The same may be said of infirm persons.



perjury—all of whom have been excluded by various decisions of the Courts.

Others are exempted from the obligation of serving, even if elected by the parishioners; and should not, therefore, be proposed for election without their consent. The following is a list of such exemptions:— **Persons exempted.**

Peers.
Sheriffs.
Members of the House of Commons.
Justices of the Peace.
Mayors, Aldermen, and (possibly) Town Councillors.
Clergymen.
Officers in the Navy or Army, when on full-pay.
Barristers and Attorneys.
Physicians and Surgeons.
Officials of the Customs, Excise, or Post Office.
Registrars of Births, Deaths, and Marriages.
Persons already acting as Churchwardens.
Roman Catholic Clergy.
Protestant Dissenting Ministers.

Persons who do not belong to any of these exempted classes are compellable, by a suit in the ecclesiastical courts, to serve the office if duly elected.[1] Those who are exempted are not so compellable, but may legally serve if they please to do so.

Roman Catholic and Protestant Dissenters may have

[1] The ecclesiastical courts will not, however, compel Quakers to act. [1 Curt. 447.]



the privilege of serving, either in their own persons or by deputy, but the deputy must be approved of by the parishioners assembled in vestry. [1 Will. & M. ch. 18, § 5; 31 Geo. III. ch. 32, § 7.] But Dissenters are not qualified for election as churchwardens of new parishes which are constituted under 1 & 2 Will. IV. ch. 38, 6 & 7 Vict. ch. 37, or 19 & 20 Vict. ch. 104—it being expressly provided in these Acts that the churchwardens shall be members of the Church of England.

Dissenters.

§ 2. *The Manner of Appointment.*

Churchwardens are *chosen* by the persons or person upon whom law or custom has laid that duty, but their appointment is only complete when they have been *admitted* by the ordinary.

The ordinary law by which their appointment is regulated is that of the 89th canon:—"All churchwardens or questmen in every parish shall be chosen by the joint consent of the minister and the parishioners, if it may be: but if they cannot agree upon such a choice, then the minister shall choose one, and the parishioners another; and without such a joint or several choice, none shall take upon them to be churchwardens: neither shall they continue any longer than one year in that office, except perhaps they be chosen again in like manner." The most common custom is for the incumbent (or in his absence the licensed curate[1]) to choose

Canon Law.

[1] The substitution of the curate for the incumbent seems to be ruled by Hubbard *v.* Penrice [2 Strange, 1246]. A perpetual curate is an incumbent. [5 Q. B., p. 69, R. *v.* Allen, L. R.]



one, and the parishioners the other; and this custom is statutably established, in the case of new parishes, by the Church Building and New Parishes Acts. Church Building Acts.

Special customs sometimes, however, take the place of the ordinary law, such customs being considered to have the force of law if they can be traced beyond the memory of man. The rule of law is that a custom, to be good, must date from the reign of Richard I. [A.D. 1189]; but proof that a custom has been observed for several centuries, or even less, is held to warrant the inference that the custom dates back to the required time, unless there is something in the custom itself which makes it morally impossible that it could have existed then.

The following are the principal customs of the kind:

[1.] In some large parishes in the North of England a churchwarden is chosen for each township of the parish.

[2.] In old London parishes both churchwardens are appointed by the parishioners.

[3.] They are sometimes appointed by the *select* vestry, instead of by the parishioners at large.

[4.] They are sometimes appointed by the lord of the manor.

[5.] In a few cases the incoming churchwardens are chosen by the outgoing ones.

These special customs are well known and recognised in their respective localities; and as judicial decisions respecting them have no application to ordinary cases, and could not establish a custom where it did not

previously exist, no further reference need be made to them.

Time of appointment.

The appointment usually takes place on Easter Monday or Easter Tuesday, but there is nothing to hinder its taking place on any other day in the same week, the 90th canon only directing that "the choice of . . . churchwardens or questmen, sidemen or assistants, shall be yearly made in Easter week." The Church Building and New Parishes Acts require that in the case of new parishes churchwardens shall be appointed within twenty-one days after the consecration of the church [6 & 7 Vict. ch. 37, § 17], or two calendar months after the formation of the parish [8 & 9 Vict. ch. 70, §§ 6 & 7], the next appointment taking place at the usual time for the appointment of parish officers. [See 58 Geo. III. ch. 48, § 73.]

An appointment at any other time of the year than Easter would be improper and irregular, but not invalid.

Appointment compulsory.

Nomination of minister's churchwarden.

Election of parishioners' churchwarden.

Where the appointment is made by the minister and parishioners, a vestry must be summoned in the ordinary manner, with due notice; and the parishioners are compellable, by mandamus, to make an appointment if they neglect their duty. [Stutter *v.* Freston, Strange, 52; R. *v.* Wise, 2 Barn. & Adolph. 107; R. *v.* Rector of Birmingham, 7 Ad. & El. 254.] Appointment by the minister need only be by *vivâ voce* nomination. That by the parishioners must be an election, made by vote in the ordinary manner, it being open to any elector present to demand a poll, in case



of dissatisfaction with the show of hands. [Anthony *v.* Seger, 1 Hagg. Consist. 10.]

Each of the churchwardens so appointed must appear before the ordinary, to receive his commission and authority by being admitted to office. The duty of the ordinary being only ministerial, except where there is a contest between rival candidates, he cannot refuse to admit (except in such cases), on account of any supposed flaw in the election, or for any other reason, except a plain inelligibility in the person—as, for instance, if he is a person who has been convicted of felony. [Anthony *v.* Seger, 1 Hagg. Consist. 11.] But it is clear that some evidence of the previous appointment must be given; and this should be done by the outgoing churchwardens themselves presenting the incoming ones as their successors. The ceremony of admission is now regulated by 5 & 6 Will. IV. ch. 62, § 9, which directs that "every person entering upon the office of churchwarden or sidesman, before beginning to discharge the duties thereof, shall . . . make and subscribe, in the presence of the ordinary, or other person" qualified to receive it, "a declaration that he will faithfully and diligently perform the duties of his office." The ordinary is bound to administer this declaration at any time when required to do so [R. *v.* Archd. Middl. 5 N & M. 494]; but churchwardens are usually admitted at the next visitation of the bishop or archdeacon after Easter. By an Order of Council made in 1869, pursuant to the provisions of 30 and 31 Vict. ch. 135, a fee of eighteen shillings is payable by each parish to the officials of the Visitation Court at every visitation; Admission.

and this fee includes that payable for the admission of the new churchwardens to their office, at whatever time they are admitted.[1]

Fully qualified by admission.

Churchwardens are not qualified to act until they are admitted by the ordinary, the 118th canon of 1603 enacting that, "The office of all churchwardens and sidemen shall be reputed ever hereafter to continue until the new churchwardens that shall succeed them be sworn, which shall be the first week

[1] The amount and apportionment of fees settled by the above Order in Council is as follows :—

	Vicar-General, Chancellor, Archdeacon, or Official.	Registrar or other Officer by usage performing the duty.	Apparitor.
	£ s. d.	£ s. d.	£ s. d.
Episcopal or Archidiaconal Visitation	0 2 0	0 12 0	0 3 6

The first fee named includes the attendance of the official, the examination of the presentments of the outgoing churchwardens, and the admission of the new churchwardens to office.

The second fee—that of the registrar—includes the drawing and issuing of the mandate for the citation of the clergy, the preparation of the visitation books, and the preparation and printing of the Articles of Enquiry and the presentment papers, the attendance at the visitation, and attesting the presentments and declarations of the churchwardens, and the registering the papers exhibited by the clergy.

The third fee specified—that of the apparitor—includes the preparation and delivery of the citations to the clergy and churchwardens, and the attendance at the visitation.

Under the old system of church-rates, these fees would be recoverable from the churchwardens: and so they still are in all cases where the churchwardens have any funds in their hands applicable to the expenses of the church; but not in other cases. [Veley *v.* *Pertwee*, Law Rep. 5 Q. B. 573.]

after Easter, or some week following, according to the direction of the ordinary;" and till they are so admitted their predecessors continue in office. [Bray *v.* Somers, 2 Best & Smith, 374.]

When admitted, they cannot be displaced until their year of office has expired, except for gross misconduct, when they may be superseded by direction of the ordinary. Even removal from the parish of which he is churchwarden does not necessarily remove one from his office [Ganvill *v.* Utting, 9 Jurist, 1081]; though a successor to him may be appointed with his consent, and the admission of such a successor by the ordinary would cancel his responsibility. Duration of office.

As the canon enacts that every churchwarden continues to be responsible for all the duties of the office until his successor is admitted by the ordinary, it is clear that he may hold office from year to year, without readmission, and even without re-election; but the omission to re-elect might lead to litigation, and would in any case be an inconvenient precedent.

II.—THE DUTIES OF CHURCHWARDENS.

It has already been mentioned that the office of churchwarden comprehends two distinct classes of functions and responsibilities. The first of these relates to the material fabric and goods of the church of which those appointed to the office are guardians; the second relates to the oversight of the clergy and laity of the parish in respect to their observance of and obedience to the ecclesiastical

laws. It should be remembered, that only in certain specified cases have they authority to act, and that in all others they have only authority to present, *i.e.* make a formal report to the ordinary, leaving to him the responsibility of acting or not acting upon their presentments. The distinction between these two classes of functions requires to be carefully kept in view, as the neglect of it has involved churchwardens in heavy pecuniary penalties, inflicted by the ecclesiastical courts.

The active duties of the office are chiefly those of providing necessaries for Divine Service, maintaining order during its performance, keeping the church and its accessories in proper condition, and taking charge of the benefice during vacancies. This last duty is not, however, thrown on them by the mere fact of their appointment, but by the act of the ordinary, who usually chooses them for this office, and commits it to them by a formal instrument of sequestration.

§ 1. *Provision of Necessaries for Divine Service.*

Whatever is needed for use in the services of the Church was, by the old ecclesiastical law, to be provided, at the cost of the parishioners, by the churchwardens. When a church is once erected and properly furnished, these current necessaries are, indeed, very few. They may be stated as chiefly consisting of the vestments of the officiating clergy, the bread and wine required for use in the Holy Communion [see page 95], the lights necessary for Evening Service—together with the salary of the parish clerk, the organist (where there is one), and the attendant or attend-



ants required for the orderly use of the church by the minister and the congregation. Though the most obvious means of obtaining funds for the supply of these necessaries has been cut off by the Compulsory Church Rates Abolition Act, it is still the duty of the churchwardens to supply them, as far as the funds in their hands will go. [See page 272.]

The provision of communion-table, pulpit, reading-desk, font, alms-chest, chalice, books, &c., ordered in the Canons of 1603, is connected with the original erection of the church rather than with its ordinary management, and need not here be noticed.

§ 2. *Duties during Divine Service.*

The only act by which churchwardens officially take part in Divine Service is that of collecting the alms of the congregation, and bringing them to the priest for presentation upon the altar. Even this is not essentially their duty, as the rubric names "the deacons, churchwardens, or other fit persons appointed for that purpose;"[1] but where the deacons do not collect them, no fitter persons can be found than the representative men of the lay parishioners, especially as they have authority in their distribution: for by the rubric at the end of the Communion Service, "After the Divine Service ended, the money given at the Offertory shall be disposed of to such pious and charitable uses, as

To collect the alms.

[1] It has been incidentally decided by the Court of Common Pleas that a priest ought not to collect the alms, the rubric descending from deacons. [Cope *v.* Barber, L. R. 7, C. P. 393; 41 L. J. M. C. 137].

the Minister and Churchwardens shall think fit. W
if they disagree, it shall be disposed of as the Or
shall appoint."

To keep order,

But it rests with the churchwardens, personally a
their deputies, to maintain order during
Service; and this is a very important
their duties, which is provided for bc
the Canon Law and by Act of Parliament.

In the 89th canon of 1603 it is enacted that the c
wardens "shall especially see that in every meet
the congregation peace be well kept." By the 19th
it is enacted, that "the churchwardens, or questme
their assistants, shall not suffer any idle persons tc
either in the churchyard or church-porch during th
of Divine Service, or preaching, but shall cause
either to come in or to depart." The 111th canon
that: "In all visitations of bishops and archdeacor
churchwardens, or questmen, and sidemen, shall tru
personally present the names of all those which l
themselves rudely and disorderly in the church, or
by untimely ringing of bells, by walking, talking, or
noise, shall hinder the minister or preacher."

It has been repeatedly ruled that churchwarde
authorised, *ex officio*, to carry out the principles set
in these canons, by doing what they can to prever
order or interruption of Divine Service; and that
other means avail, they are empowered to turn the
der out of the church, provided they use no unnec
violence in doing so. [Reynolds *v.* Monkton, 2 M.
384; Williams *v.* Glenister, 3 Barn. & Cressw.



Burton *v.* Henson, 10 Meeson & Welsby, 105.] "Brawling" in church, or interrupting the minister in Divine Service, was formerly met by several old statutes, which imposed a fine upon the offender; but an Act of Parliament was passed in 1860, "to abolish the jurisdiction of the ecclesiastical courts . . . in England and Ireland in certain cases of brawling," which has provided a more effective remedy.[1]

This Statute [23 & 24 Vict. ch. 32] enacts as follows:—

"§ 2. Any person who shall be guilty of riotous, violent, or indecent behaviour . . . in any cathedral church, parish or district church or chapel . . . whether during the celebration of Divine Service or at any other time, or in any churchyard or burial-ground, or who shall molest, let, disturb, vex, or trouble, or by any other unlawful means disquiet or misuse any preacher duly authorised to preach therein, or any clergyman in Holy Orders ministering or celebrating any sacrament, or any Divine Service, rite, or office, in any cathedral, church, or chapel, or in any churchyard or burial-ground, shall, on conviction thereof before two justices of the peace, be liable to a penalty of not more than five pounds for every such offence; or may, if the justices before whom he shall be convicted think fit, instead of being subjected to any pecuniary penalty, be committed to prison for any time not exceeding two months.

and give offenders into custody.

[1] By its 5th section, the Act of 1860 repeals 5 & 6 Edw. VI. ch. 4, so far as relates to persons not in Holy Orders. But by its 6th section, it expressly leaves 1 Mar. sess. 2, ch. 3, 1 Eliz. ch. 2, and 1 Will. and Mary, ch. 18, § 18 [§ 15 in 'The Statutes Revised'], in force; and the penalties in those Acts are far more severe.

"§ 3. Every such offender in the premises, after the said misdemeanour so committed, immediately and forthwith may be apprehended and taken by any constable or churchwarden of the parish or place where the said offence shall be committed, and taken before a justice of the peace of the county or place where the said offence shall have been so committed, to be dealt with according to law."

A summary power is thus placed in the hands of churchwardens of apprehending any offender (either personally, or by the intervention of a constable) who shall be guilty of "riotous, violent, or indecent behaviour;" the latter term being doubtless intended to include such offences as keeping the head covered—except on account of infirmity, which is provided for by Canon 18—during the time of Divine Service, or even when service is not going on, in a consecrated building.

Assignment of seats to parishioners.

Associated with the duty of keeping order in church is that of seeing that the parishioners are provided with seats in an orderly manner. This duty devolves upon the churchwardens as officers of the ordinary, whose authority in the matter is final. By the common law every parishioner is entitled to a seat in his parish church, and in 1841 Baron Rolfe expressed his opinion, "that the churchwardens have a right to exercise a reasonable discretion in dictating where the congregation shall sit,"—even to the extent of removing a person from one seat to another if thought more convenient, and done without unnecessary force. [Reynolds *v.* Monckton, 2 M. & R. 384.] Whether



such assignment of seats is made as a yearly arrangement, whether it is made at the time when Divine Service is about to be or is being celebrated, or whether the power to make it is only used in disputed cases—the seats being ordinarily considered free, and open to the first comer—are matters entirely within the discretion of the churchwardens, subject to the control of the ordinary. Their jurisdiction is, however, restricted to the body of the church, and to that part of the chancel not required by the seats of the rector or lay impropriator and of the officiating minister. There may be also, and are not unfrequently, private rights to particular seats, conferred by a faculty; *i.e.* a licence from the ordinary, or held by ancient prescriptive right, which the churchwardens cannot interfere with. Special regulations for the disposition of seats are also laid down in the Church Building Acts, which affect the churches built under those Acts.

No jurisdiction in faculty seats.

The only other duty laid upon churchwardens in connection with Divine Service is the registration of the names of strange preachers. The 52nd canon of 1603 provides: "That the bishop may understand (if occasion so require) what sermons are made in every church of his diocese, and who presume to preach without licence, the churchwardens and sidemen shall see that the names of all preachers, which come to their church from any other place, be noted in a book that they shall have ready for that purpose; wherein every preacher shall subscribe his name, the day when he preached, and the name of the bishop of whom he had licence to preach."

§ 3. *The Care and Repair of the Church and its Accessories.*

The freehold of the whole church fabric (except the chancel, should there be a lay rector) and churchyard is vested in the rector or vicar, by his institution and induction; but the moveable goods of the church are, by the common law, vested in the churchwardens, as a quasi corporation (for the benefit of the parishioners at large), whose continuity is preserved, notwithstanding the annual change in the persons constituting it.[1] [Rex *v.* Martin Rice, Lord Raym. 138; Jackson *v.* Adams, 2 Bingh. N.C. 402.] Thus, the 89th canon of 1603 orders that the goods and money in the hands of outgoing churchwardens shall be handed over to their successors; and monitions may be issued to the churchwardens of a parish, without naming them individually [Liddell *v.* Beale, 14 Moore P.C. 1]; so that the continuous corporation, and not the individual persons, may be bound by them.

Trusteeship of moveable church goods.

In the same capacity, they are responsible for the good preservation of the church fabric, the churchyard, and the church-goods; the

Responsibility for preservation and repair.

[1] In this capacity churchwardens are competent to buy church-goods for themselves and their successors, to accept gifts of such goods, and to sell them (with the consent of the parishioners and the ordinary), and to bring an action for trespass in case of their being stolen, damaged, or destroyed. They cannot, however, in any of these cases act separately. [1 Rol. Abr. *Chev.* 393; Starkey *v.* Barton, Cro. Jac. 234.]



chancel being mostly excepted, as the responsibility for its preservation and repair rest upon the rector.[1]

As regards the church and churchyard, these duties are laid down in the 85th canon of 1603, which enacts that: "The churchwardens or questmen shall take care and provide that the churches be well and sufficiently repaired, and so from time to time kept and maintained, that the windows be well glazed, and that the floors be kept paved, plain, and even, and all things there in such an orderly and decent sort, without dust, or anything that may be either noisome or unseemly, as best becometh the house of God, and is prescribed in an homily to that effect. The like care they shall take, that the churchyards be well and sufficiently repaired, fenced, and maintained with walls, rails, or pales, as have been in each place accustomed, at their charges unto whom by law the same appertaineth; but especially they shall see that in every meeting of the congregation peace be well kept, and that all persons excommunicated, and so denounced, be kept out of the church." **Church and churchyard.**

This will include whatever is permanently affixed to the freehold—such as walls, fences, windows, gates and doors, roof, floor, drains, stoves and flues, &c.; and also the font, pulpit, and seats, together with everything that can be reasonably **Fabric and fixtures.**

[1] The obligation of repairing the chancel sometimes rests, by custom, on the parishioners, and they could then be compelled to undertake it. [Stewart *v.* Francis, 3 Curt. 299; Bishop of Ely *v.* Gibbons and Goody, 4 Hagg. 156.]

considered as substantially part of the building and its appurtenances.

Moveable goods.

The moveable goods of the church, which the churchwardens are bound, on behalf of the parishioners, to preserve and repair, consist of such things as are absolutely enjoined for use in Divine Service, and of other things which have been in use from time immemorial, or have been accepted by them for the use of the church. Of the first class are the vestments of the ministers, the sacred vessels and other furniture of the altar, with the books used in Divine Service.[1] Of the second class are the organ, the bells, the bier, the clock, the vestry furniture, and such like—all of which are used for the advantage of the parishioners, and ought therefore to be kept in order by them.

To fulfil their duties as regards the preservation and repair of the church and its goods, and in providing the necessaries for Divine Service, two things are obviously required by the churchwardens:—first, that they should have access to the church; and, secondly, that they should be supplied with funds.

The whole church[2] and churchyard being vested in the

[1] In mediæval times all such things were required to be exhibited to the archdeacon at his annual visitation of the parish, he having an inventory in his hands by which they were examined. See 11th and 25th of Archbishop Langton's Constitutions, A.D. 1222. A similar inspection, in person or by deputy, of the church, by the archdeacon or his official every three years, is required by the 86th canon of 1603.

[2] From this, of course, must be excepted the chancel where there



rector or vicar, as his freehold, access to either is entirely under his control. He alone has any legal right to the keys of the churchyard, belfry, nave, vestry, and chancel; and no one can legally use them for entrance thereto, except by his or their permission. "The minister," said Sir John Nicholl, "has, in the first instance, the right to the possession of the key, and the churchwardens have only the custody of the church under him. If the minister refuses access to the church on fitting occasions, he will be set right on application and complaint to higher authorities." [Lee *v.* Matthews, 3 Hagg. Consist. 173.] In cases where churchwardens have possessed themselves of duplicate keys, or in any way obtained access to the church, chancel, or belfry, without the permission of the incumbent, they have been severely censured by the judges, ordered to deliver up the keys, and condemned in costs. [Redhead *v.* Wait and others, 6 *Law Times* (N.S.) 580; Dewdney *v.* Good and Ford, 7 Jur. (N.S.) 673; Harward *v.* Arden, *Eccl. Gaz.*, May and Sept., 1867; Ritchings *v.* Cordingley, *Law Rep.* 3 Adm. & Eccl. p. 113, *Eccl. Gaz.*, Aug., 1868; Sir R. Phillimore's *Eccl. Judgments*, p. 133; Marshall *v.* Andrew, *Eccl. Gaz.*, Aug., 1871.]

Access to the church.

In all that is done by churchwardens this plain principle of law should therefore be strictly recognised, and access to the church obtained, by themselves or their deputies, only by the expressed or implied permission of

is a lay impropriator. In that case the chancel is the freehold of the lay impropriator or rector, but the vicar has the custody of it, though bound to give, at all reasonable times, access to the lay rector.



the incumbent. If he refuses it, so as to prevent them from doing their duty, they must complain to the ordinary.

Provision of funds.

As regards the funds necessary for carrying on Divine Service, repairing the church and its goods, or paying salaries, it is the duty of the churchwardens to use every reasonable means for obtaining them.

Church-rate.

The ancient mode of doing this is by a rate, agreed to by the parishioners assembled in vestry. By "The Compulsory Church Rates Abolition Act, 1868" [31 & 32 Vict. ch. 109], such a rate cannot now be recovered by legal process from those who refuse to pay it. There is nothing, however, to hinder the rate being made and collected, as formerly, from those who are willing to pay it; and those who do not are, by the 8th section of the Act, excluded from enquiring into, objecting to, or voting in respect of, its expenditure. A "church-rate" may still, therefore, be regarded as the ordinary means for meeting church expenses. A vestry, being assembled in the ordinary manner [see page 292], an estimate should be laid before the parishioners of the expenses which the churchwardens will have to incur in the discharge of their duties; and the assessment being agreed to, it is to be afterwards collected from all parishioners who are willing to pay it. Formerly, much care was required in deciding what should be paid out of the rate, as any payment not strictly recognised by law destroyed its validity. This is now of no legal consequence, since, the rate being voluntary, the parishioners are at liberty to agree what they



will pay out of it; and the question has become one of expediency instead of law.

Of collections made in other ways than by rate nothing need be said, but that by the same Act of Parliament a body of church-trustees may be appointed, for the purpose of receiving and expending all such moneys, and that the expenses incurred by churchwardens may be paid out of them. [See page 284.] In many parishes there are small charities or church funds of old standing applicable to the payment of the expenses incurred in performing Divine Service, and in repairing the church.

§ 4. *Presentment of Offences against Ecclesiastical Law.*

One part of the office of churchwarden is to report to the ordinary all offences, or supposed offences, against the laws of the Church, whether committed by the clergy or the laity of the parish. In this churchwardens represent the ancient *testes synodales*, or *Synodsmen*, who were originally persons called out by the bishop from the lay attendants at his diocesan synod, and required on oath to bear witness to the moral condition of their district.[1] In later times similar lay officers were appointed by the bishop in every parish, for the purpose of reporting to him, on oath, the names and offences of those who deserved spiritual correction by the ordinary, and these were called *Questmen*.[2] By a consti-

Synodal witnesses.

Questmen.

[1] The presentments of the *testes synodales* were obviously analogous to the modern presentments of the Grand Jury, the County Inquest.

[2] Ayliffe's *Parergon*, p. 516; Kennet's *Paroch. Antiq.* p. 649.

tution of Archbishop Chicheley [A.D. 1416], three or four such men of good report were to be appointed in every deanery and parish, for the purpose of presenting those who held private conventicles, or in any other way maintained heresies or errors [Spelman's *Canons*, ii. 672]; and it was no doubt about that time that the duty of reporting such offences against the ecclesiastical laws began to devolve upon the officers known to us as churchwardens.

Time for making presentments.

Such presentments are now usually made once a year, at the archdeacon's or the bishop's visitation; but they are by no means limited to that time.[1] By the 116th canon of 1603, it is enacted that churchwardens shall not be "enforced to exhibit their presentments to any having ecclesiastical jurisdiction above once in every year, where it hath been no oftener used, nor above twice in any diocese whatsoever, except it be at the bishop's visitation;" and by the 117th canon of the same date, that they shall not "be called or cited, but only at the said time or times before limited, to appear before any ecclesiastical judge whatsoever, for

[1] The modern "visitation," which also takes the place of the ancient diocesan or archidiaconal synod, represents in a perfunctory and superficial form the mediæval visitation, which used to be a personal visit officially made to each parish by the bishop or his proper deputy. Upon these visits the church was inspected both as to its temporal and spiritual welfare, the visitor being, in effect, an inspector of parishes analogous to the modern inspector of schools. Visitation-fees, or procurations, are sums of money paid as compositions for the entertainment of man and horse on the occasion.



refusing at other times to present any faults committed in their parishes, and punishable by ecclesiastical law." It is nevertheless provided: "That as good occasion shall require, it shall be lawful for every minister, churchwardens, and sidemen to present offenders as often as they shall think meet; and likewise for any godly-disposed person, or for any ecclesiastical judge, upon knowledge, or notice given unto him or them of any enormous crime within his jurisdiction, to move the minister, churchwardens, or sidemen, as they tender the glory of God and reformation of sin, to present the same, if they shall find sufficient cause to induce them thereunto, that it may be in due time punished and reformed. Provided, that for these voluntary presentments there be no fee required or taken of them, under the pain aforesaid."

Subjects for presentment.

From the preceding words, it will be seen that the subjects for report to the bishop by churchwardens are "any offences committed in their parishes, and punishable by ecclesiastical laws." It is customary to issue "Articles of Enquiry," according to the injunction of the 119th canon, which enacts that: "For the avoiding of such inconveniences as heretofore have happened, by the hasty making of bills of presentments, upon the days of the visitation and synods, it is ordered: That always hereafter every chancellor, archdeacon, commissary, and official, and every other person having ecclesiastical jurisdiction, at the ordinary time when the churchwardens are sworn; and the archbishop and bishops, when he or they do summon their visitation, shall deliver, or cause to be delivered, to the church-

wardens, questmen, and sidemen of every parish, or to some of them, such books of articles as they, or any of them, shall require, for the year following, the said churchwardens, questmen, and sidemen, to ground their presentments upon, at such times as they are to exhibit them. In which book shall be contained the form of the oath, which must be taken immediately before every such presentment; to the intent that, having beforehand time sufficient, not only to peruse and consider what their said oath shall be, but the articles also whereupon they are to ground their presentments, they may frame them at home both advisedly and truly, to the discharge of their own consciences, after they are sworn, as becometh honest and godly men."

These Articles of Enquiry have varied greatly in different times and places, there being no prescribed form for them; and they are not to be considered as necessarily comprehending all the subjects on which presentments may or ought to be made.[1] In the Canons of 1603 special directions are given for the presentment by the churchwardens of the names of notorious sinners [Canon 26], who "offend their brethren, either by adultery, whoredom, incest, or drunkenness, or by swearing, ribaldry, usury, and any other uncleanness and wickedness of life" [Canon 109]; of the names of schismatics [Canons 22 & 110]; parishioners non-attendant at

Ordered in the Canons.

[1] A large and most valuable collection of visitation articles, dating from 1561 to 1730, was made for the Ritual Commissioners by the Rev. W. D. Macray, of the Bodleian Library, and printed by them in their Second Report in 1868.



the Holy Communion [Canons 28 & 112]; strangers attendant at the Holy Communion [Canon 28]; parishioners who have their children baptized out of the parish [Canon 57]; disturbers of Divine Service [Canon 111]; and preachers who designedly and openly "impugn or confute any doctrine delivered by any other preacher in the same church, or in any church near adjoining," without the bishop's consent or direction [Canon 53]. Many of these subjects for report to the bishop are now more or less provided for by later legislation, while schismatics are exempted from the purview of the ecclesiastical courts by the Toleration Acts. But unless presentments grounded on these canons are actually forbidden, they cannot be considered as entirely obsolete, and in cases of notorious scandal, whether in the laity or the clergy, have been, and might often be, made still, and acted on by the bishop, with advantage to religion.

The 115th canon of 1603 admonishes and exhorts "all judges, both ecclesiastical and temporal, as they regard and reverence the fearful judgment-seat of the Highest Judge, that they admit not in any of their courts any complaint, plea, suit, or suits against any such churchwardens, questmen, sidemen, or other church officers, for making any such presentments, nor against any minister for any presentment that he shall make, all the said presentments tending to the restraint of shameless impiety; and considering that the rules both of charity and government do presume that they did nothing therein of malice, but for the discharge of their consciences."

No suit to be made for presenting.



Another class of presentments by churchwardens is always indicated in the Articles of Enquiry, though not specially referred to in the canons—namely, presentments of the minister for irregularities in connection with the performance of Divine Service. The canons and rubrics bearing upon these cover a very large field indeed, and it is impossible to give any summary of them that will be practically useful in this place. It has, however, been frequently ruled, that any such irregularities can only be met by the churchwardens by means of presentment to the ordinary, and that all other action respecting them must be taken by him. "If the minister," says Lord Stowell, "introduces any irregularity into the service, they have no authority to interfere, but they may complain to the ordinary of his conduct. I do not say there may not be cases where they may be bound to interpose: in such cases they may repress, and ought to repress, all indecent interruptions of the service by others, and are the most proper persons to repress them, and they desert their duty if they do not. And if a case could be imagined in which even a preacher himself was guilty of any act grossly offensive, either from natural infirmity or from disorderly habits, I will not say that the churchwardens and even private persons might not interpose to preserve the decorum of public worship. But that is a case of instant and overbearing necessity that supersedes all ordinary rules. In cases which fall short of such a singular pressure, and can await the remedy of a proper legal complaint, that is the only proper mode to be pursued by a

Presentment of irregularities in performance of Divine Service.

churchwarden, if private and decent application to the minister himself shall have failed in preventing what he deems the repetition of an irregularity. At the same time, it is at his own peril if he makes a public complaint, or even a private complaint, in an offensive manner of that which is no irregularity at all, and is in truth nothing more than a misinterpretation of his own." [Hutchins *v.* Denziloe and Loveland, 1 Hagg. Consist. 175.] Equally strict is the rule that the churchwardens have no authority to interfere with any of the ornaments of the church, or with any temporary decorations set up there with the consent of the minister. If they consider any of these to be contrary to ecclesiastical law, they may report them to the bishop in the form of a presentment; but can in no other way interfere with them, without being liable to a suit in the ecclesiastical courts, in which proof of such interference (unless, perhaps, in the case of glaringly indecent and irreverent ornaments or decorations, which must be removed at once to avoid scandal) would bring condemnation with costs. [Ritchings *v.* Cordingley, *Law Rep.* 3 Adm. & Eccl. 113; *Eccl. Gaz.*, Aug. 1868; Marshall *v.* Andrew, *Eccl. Gaz.*, Aug. 1871; Blake *v.* The Churchwardens of Wetheral, *Eccl. Gaz.*, May, 1874; Evans *v.* Dodson, *Eccl. Gaz.* Dec. 1874. Phillimore's *Eccl. Judgments*, p. 133.]

Grave nature of presentments.

As regards presentments in general, it may be useful to add that they are a grave proceeding, since they are made to the ordinary in his judicial capacity, and that they are made under the declaration taken in lieu of oath by the churchwardens when admitted to office.



§ 5. *Custody of Benefice during Vacancy.*

When a benefice is vacant, by the resignation or the death of its incumbent, the churchwardens have generally to take charge of its goods, and to provide out of them for the maintenance of Divine Service, until a new incumbent is instituted and inducted. This office is committed to them by an instrument of sequestration, issued by the registrar of the bishop's court, in which they are appointed sequestrators. The proper way of obtaining this sequestration is for the churchwardens to signify the vacancy of the living to the registrar, who will then procure and issue to them the writ[1] in the following form:—"William De Pledge, Esq., M.A., Vicar General in Spirituals of the Right Reverend Father in God, John, by Divine permission Lord Bishop of the diocese of Gloucester, official principal lawfully constituted of his Consistorial Court of Gloucester. To our well-beloved in Christ, the churchwardens of the parish and parish church of Benstock, in the county of Gloucester, and diocese aforesaid, greeting,—These are to empower you to collect and gather all and singular the tithes, rent-charges, profits, and emoluments, belonging to the said rectory of Benstock, now void by the death of Edward Gardiner, clerk, the last incumbent there, and out of the same to pay all taxes to the Queen, the bishop

To obtain a sequestration.

[1] Unless churchwardens are thus empowered, they have no *legal* authority to take charge of the benefice during a vacancy. [Prout *v.* Cresswell, 1 Lee, 36.] It is necessary, therefore, both for the good of the parish and for their own security, that they should apply for the sequestration.



and archdeacons' procurations and synodals, and all other dues incumbent upon and belonging to the said benefice, hereby requiring you, or either of you, to give a just and faithful account of your doings herein, when by law you shall be required to do so. You are also to pay the curate or minister for supplying the cure during the vacancy such stipend as may be assigned to him by the bishop.

"Given under the seal of our office this twelfth day of August, in the year of our Lord one thousand eight hundred and seventy-two.

"THOS. SMITH, N.P., Regr."

Under authority of the bishop, so granted, the churchwardens are required "to manage all the profits and expenses of the benefice for the successor, to plough and sow the glebe, gather in tithes, thresh out and sell corn, repair houses, make up his fences, pay his tenths, synodals, and procurations, and what other things are necessary during the vacation." They are, in fact, to receive all the income of the benefice, and to pay all its expenses, as the incumbent himself would be entitled and obliged to do.

To take the profits and pay the expenses of the benefice.

It is also their duty to provide a clergyman or clergymen for the performance of Divine Service, and for the other duties of the vacant benefice. Such substitutes for an incumbent must, of course, be presented to the bishop for approval, if they are not already licensed by him; and when so approved of by him, they are to be paid such stipend as he may have appointed out of the profits of the benefice. Respecting the last point, it is provided, by 1 & 2 Vict. ch. 106,

To provide clergy and pay them.



§ 100: "That upon the avoidance of any benefice, by death, resignation, or otherwise, the sequestrator appointed by the bishop shall, out of the profits thereof which shall come to his hands, pay to the curate or curates *appointed by such bishop to perform the ecclesiastical duties of such benefice during the vacancy thereof*, such stipend or stipends as shall be ordered to be paid to him or them by such bishop, not exceeding the respective stipends allowed by this Act, and in proportion only to the time of such vacancy." It is also provided by § 101: "That if the profits of such benefice which shall have come to the hands of such sequestrator during the vacancy thereof, shall not be sufficient to pay such stipend, the same, or so much thereof as shall remain unpaid, shall be paid to such curate by the succeeding incumbent of such benefice out of the profits thereof."

Accounting to new incumbent.

Upon the induction of the new incumbent, the churchwardens must account to him for the profits of the benefice during the vacancy, these belonging to him from the day of his predecessor's death or resignation. Any dispute between them and him is to be carried before the ordinary—that is, into the bishop's court.

Other cases of sequestration.

Churchwardens are also occasionally appointed sequestrators under other circumstances than those arising from vacancies—as in case of a suspended incumbent, or a sequestration for payment of an incumbent's debts. Their responsibilities are then of a similar kind to those above stated, but are particularly defined, with reference to the particular case, in the instrument by which they are appointed.

Chapter II.

CHURCH TRUSTEES.

UNDER "The Compulsory Church Rate Abolition Act, 1868," a power is given to appoint, under certain circumstances, a body of church trustees. The manner of their appointment and their duties are thus set forth in that Act [31 & 32 Vict. ch. 109, § 9]:—

"A body of trustees may be appointed in any parish, for the purpose of accepting, by bequest, donation, contract, or otherwise, and of holding, any contributions which may be given to them for ecclesiastical purposes in the parish.

"The trustees shall consist of the incumbent and of two householders or owners or occupiers of land in the parish, to be chosen in the first instance, and also from time to time, on any vacancy in the office by death, incapacity, or resignation, one by the patron, and the other by the bishop of the diocese in which the parish is situate.

"The trustees shall be a body-corporate by the name of the Church Trustees of the parish to which they belong, having a perpetual succession and a common seal, with power to sue and be sued in their corporate name.



"The trustees may from time to time, as circumstances may require, pay over to the churchwardens, to be applied by them either to the general ecclesiastical purposes of the parish, or to any specific ecclesiastical purposes of the parish, any funds in their hands, and the funds so paid over may be applied to such purposes, and shall not be applied to any other purpose: Provided always, that no power shall be thereby conferred on the churchwardens to take order with regard to the ecclesiastical purposes of the parish, further or otherwise than they are now by law entitled to do: Provided also, that due regard shall be had to the directions of the donors of funds contributed for any special ecclesiastical purposes, and subject as aforesaid.

"The trustees may invest in government or real securities any funds in their hands, and accumulate the income thereof, or otherwise deal with such funds as they think expedient, subject to the provisions of this Act.

"The incumbent shall be the chairman of the trustees.

"The trustees shall once, at the least, in every year lay before the vestry an account of their receipts and expenditure during the preceding year, and of the mode in which such receipts have been derived and expenditure incurred, together with a statement of the amount, if any, of funds remaining in their hands at the date of such account."

This provision of church trustees would seem to give some legal recognition and assistance to the voluntary system so largely adopted in the Church of England.

Chapter III.

PARISH CLERKS, SEXTONS, AND BEADLES.

THESE lay officers of the Church have lost their importance in some parishes, through changes of customs in Divine Service, the substitution of cemeteries for churchyards, and the provision of a municipal police; but there are other parishes in which they are still of practical importance, and the exact legal footing on which they stand ought not to be overlooked.

I.—PARISH CLERKS.

The parish clerk is the representative man of the lay clerks or choirmen of the parish. It is not improbable that when parish choirs were universal, or nearly so, throughout the Church of England, there was one of the lay clerks whose duty it was to be constantly present, even when the other lay clerks were absent, at every service which was celebrated by the parish minister, to say or sing the responses as the leader, or the representative, of the laity, and that the parish clerk of modern days is thus a very ancient officer of the Church. This is confirmed by the rubrics of the Prayer Book, which several



times mention the "minister and clerks," or "the priest and clerks;" and which once, in the Marriage Service, besides speaking of them in the plural, as engaged in the saying or singing of the psalm, also directs that the bridegroom shall lay on the book "the accustomed duty to the priest and clerk," using the word in the singular number.

Appointment of clerks.

The existing law respecting the appointment of parish clerks,[1] except in a few cases where a custom in the parishioners to appoint can be proved, is based on the 91st canon of 1603: "No parish clerk upon any vacation shall be chosen, within the City of London, or elsewhere within the province of Canterbury, but by the parson or vicar: or, where there is no parson or vicar, by the minister of that place for the time

[1] The ancient Corporation of Parish Clerks, which is numbered among the "companies" of the City of London, was originally known as "The Fraternity of St. Nicholas," having received its charter in the first instance from Henry III. in the year 1233. It was reincorporated by James I. in the year 1611, and these charters were confirmed by Charles I. in the year 1636; the style of the fraternity being then set forth in the form, "The master, wardens, and fellowship of parish clerks of the cities of London, Westminster, borough of Southwark, and fifteen out-parishes." They used formerly to attend the funerals of eminent persons, clad in surplices, walking in front of the corpse, and singing till they came to the church. Ecclesiastical singing was much cultivated and encouraged by them.

Some writers of authority have spoken of the office of parish clerk as identical with that of *aquæ-bajulus*, and others have even confused it with that of chantry-priest. The fact seems to be that minor and ill-paid offices were accumulated on one of the lay clerks, and that thus he became *aquæ-bajulus* and parish clerk, and perhaps sexton as well. See Hale's *Precedents* [Nos. 140, 192, 254, 283, 348, & 350] for illustrations of this point.



being; which choice shall be signified by the said minister, vicar, or parson, to the parishioners the next Sunday following, in the time of Divine Service. And the said clerk shall be of twenty years of age at the least, and known to the said parson, vicar, or minister, to be of honest conversation, and sufficient for his reading, writing, and also for his competent skill in singing, if it may be. And the said clerks so chosen shall have and receive their ancient wages, without fraud or diminution, either at the hands of the churchwardens, at such times as hath been accustomed, or by their own collection, according to the most ancient custom of every parish."

It has been ruled that where the benefice is vacant, or the holder of it suspended, "the minister of that place for the time being" is the licensed *locum tenens*. [Pindar *v.* Barr, 4 E. & B. 105.] It has also been ruled that the appointment need not be made in writing, and that the omission of notice to the parishioners does not invalidate it. [1 Phill. 166.]

Duties of clerks.

The duties of the clerk are to assist the clergy in saying and singing Divine Service (either as one of a choir, or by himself, or as leader of the congregation), by singing or saying the responses. He ought properly, also, to take the leading place in singing the psalms, anthems, and hymns, but is rarely qualified for such a duty.[1] In all the minor offices of

[1] An old complaint: for on the 6th of May, 1610, Thomas Milborne, clerk of the parish of East Ham, is presented, among other reasons, "For that he singeth the Psalms in the church with such a jesticulous tone and altitonant voyce, viz., squeakinge like a gelded pigg, which



the Church not usually celebrated with a congregation, it is also his duty to perform the same part—as at marriages and burials. The clerk often takes the place of the sexton in duties connected with the vesting of the clergy, the preparation of the altar for Holy Communion, &c.; and in small churches the two offices are frequently held by one and the same person.

Payment of clerk.

The 91st canon, already quoted, directs that the parish clerk shall receive his "ancient wages," either by the hands of the churchwardens, or by his own collection, "according to the most ancient custom of every parish." These wages are generally made up of three elements—a salary (usually payable out of the church-rate), fees, and Easter dues.

Dismissal of clerk from his office.

It was formerly very difficult to displace a parish clerk, the only strict way of doing so being by a formal suit in the ecclesiastical court;[1] but a speedier method of so doing has been provided by a modern Act of Parliament—7 & 8 Vict. ch. 59, § 5. By that Act it is directed: "That if at any time it shall appear, upon complaint or otherwise, to any archdeacon or other ordinary, that any person not in Holy Orders, holding or exercising the office of church clerk, chapel clerk, or parish clerk, in any district, parish, or

doth not only interrupt the other voyces, but is altogether dissonant and disagreeing unto any musical harmonie. And he hath been requested by the minister to leave it, but he doth obstinatelie persist and contynue therein." [Hale's *Precedents*, No. 742.]

[1] It has been said, however, that for reasonable cause a parish clerk may be removed by the person who appointed him.



place within and subject to his jurisdiction, has been guilty of any wilful neglect of or misbehaviour in his said office, or that by reason of any misconduct he is an unfit and improper person to hold or exercise the same, it shall be lawful for such archdeacon or other ordinary forthwith to summon such church clerk, chapel clerk, or parish clerk to appear before him, and also by writing under his hand, or by such process as is commonly used in any of the courts ecclesiastical for procuring the attendance of witnesses, to call before him all such persons as may be competent to give evidence or information respecting any of the matters imputed to or charged against such clerk; and such archdeacon or other ordinary may, if he see fit, examine upon oath, to be by him administered in that behalf, any of the persons so attending before him, respecting any of such matters; and may thereupon summarily hear and determine the truth of the matters so imputed to or charged against such clerk; and if, upon such investigation, it shall appear, to the satisfaction of such archdeacon or other ordinary, that the matters so imputed to or charged against such clerk are true, it shall be lawful for the said archdeacon or other ordinary forthwith to suspend or remove him from his office; and, by certificate under his hand and seal, directed to the rector or other officiating minister of the parish, district, or place wherein such clerk held or exercised his office, to declare the office vacant; and a copy of such certificate shall thereupon, by such rector or other officiating minister, be affixed to the principal door of the church or chapel in which such clerk usually exercised his office; and the

person or persons who, upon the vacancy of such office, are entitled to elect or appoint, may forthwith proceed to elect or appoint some other person to fill the same." By the 6th clause of the same Act, if he occupied any house or other premises by right of such office (and, in some cases, he has such a house, or the rent of a piece of land, as part of his wages), the clerk may be ejected from them on the ground of such dismissal.

Deputy clerk.

It is lawful for a parish clerk to appoint a deputy; and if the deputy competently fulfils his office, such performance of duty by deputy, instead of in person, does not constitute a legal ground of dismissal. The deputy clerk is removable by his principal at any time, and without formal process.[1]

By 59 Geo. III. ch. 134, § 20 (the second of the Church Building Acts), it is provided that, "The clerk in every church and chapel erected, built, or acquired, or appropriated under the provisions of 58 Geo. III. ch. 45, or this Act, shall be annually appointed by the minister of the church or chapel." A clerk appointed under this section cannot be dismissed without reason. [Jackson *v.* Courtenay, 8 El. & Bla. 8; 27 L. J. (Q.B.) 37.] By 19 & 20 Vict. ch. 104, § 9, "The parish clerk and sexton of the church of any parish constituted under 6 & 7 Vict. ch. 37, and 7 & 8 Vict. ch. 94, or this Act, shall and may be appointed by the incumbent for the time being of such

[1] It was not uncommon, formerly, for a clergyman to appoint a friend to the office of parish clerk, who at once appointed a deputy to perform the duties of the office, and thus to ensure the power of immediate dismissal of the acting officer in case of misconduct.



church, and be by him removable, with the consent of the bishop of the diocese, for any misconduct.

The same Act of Parliament [7 & 8 Vict. ch. 59 § 2] provides for the appointment of persons in holy orders to the office of parish clerk; but such "clerks in orders" are subject to the ordinary laws which regulate the appointment, duties, and dismissal of licensed curates. The following is the clause relating to them: "That when and so often after the passing of this Act as any vacancy shall occur in the office of church clerk, chapel clerk, or parish clerk, in any district, parish, or place, it shall be lawful for the rector or other incumbent, or other the person or persons entitled for the time being to appoint or elect such church clerk, chapel clerk, or parish clerk as aforesaid, if he shall think fit, to appoint or elect a person in the holy orders of deacon or priest of the United Church of England and Ireland to fill the said office of church clerk, chapel clerk, or parish clerk; and such person so appointed or elected as aforesaid shall, when duly licensed as hereinafter provided, be entitled to have and receive all the profits and emoluments of and belonging to the said office, and shall also be liable in respect thereof, so long as he shall hold the same, to perform all such spiritual and ecclesiastical duties within such district, parish, or place as the said rector or other incumbent, with the sanction of the bishop of the diocese, may from time to time require; but such person in holy orders so appointed or elected as aforesaid shall not by reason of such appointment or election have or acquire any freehold or absolute right to or interest in the said

Clerk in Orders.



office of church clerk, chapel clerk, or parish clerk, or to or in any of the profits or emoluments thereof; but every such person in holy orders so appointed or elected as aforesaid shall at all times be liable to be suspended or removed from the said office, in the same manner and by the same authority, and for such or the like causes, as those whereby any stipendiary curate may be lawfully suspended or removed, such suspension or removal nevertheless being subject to the same power of appeal to the archbishop of the province to which any stipendiary curate is or may be entitled."

Two subsequent clauses provide that if any such parish clerk in holy orders be appointed by other persons than the incumbent, the appointment shall be subject to his approval; and that no appointment of assistant clergy under the Act shall exempt incumbents from the duty of providing curates in cases where they are otherwise liable.

II.—SEXTONS.

The ancient and honourable office of Sacristan usually finds its modern equivalent in the labouring man who attends to the manual work necessary in the church or churchyard, under the contracted title of Sexton.[1]

The appointment of a sexton depends very much upon

[1] The ancient form of the office is still retained in its integrity in some cathedral churches, where the minor canon who holds it is charged with the care of the fabric of the church, of the *instrumenta* used in Divine Service, with the preparation of and provision for the altar, and with the burial of the dead.



custom, there being no judicial decision on the subject that can be reckoned of general application. As an officer whose duties are associated with the performance of Divine Service, and with the freehold of the churchyard, or of any part of the church, he is the deputy of the rector or vicar: as charged with the care, &c., of the fabric of the nave, the bells, and *instrumenta* of Divine Service, he is the deputy of the churchwardens. Mr. Justice Patteson decided that, *primâ facie*, the right and duty of appointing the sexton is in the rector or vicar of the parish. [Reg. *v.* Stoke Damerel, 5 Adolph. & Ellis, 584.] Some parishes have, however, a custom of electing the sexton, and this would be a good legal custom, to the exclusion of the rector or vicar. [Causfield *v.* Blenkinsop, 4 Exch. 234.] But where the parish clerk is also sexton, the right of appointment is less doubtful, as the clerk is to be appointed by the rector or vicar, and the fact of his being sexton also does not alter the case. It is to be remembered that, however he is appointed, he can have access to the church only by permission of the incumbent.

Appointment of sexton.

The duties of the sexton are determined chiefly by custom, but they are of a similar nature to those of the ancient sacristan. He is keeper of the church-keys, has general charge of the church, its cleansing and lighting, as also of the vestments and *instrumenta* of Divine Service. The sacristan was the proper officer to prepare the altar, and to provide the elements, for the Holy Communion; and, so far as the sexton is the successor of the sacristan, this would seem

Duties of sexton.



to be his office; but it may be questioned whether this duty has not rather now devolved upon the parish clerk. [See Rex. *v.* Inhabitants of Liverpool, 3 T. R. 118.] He is also the superintendent of the bell-ringers, and has the care of the churchyard as well as of the church; and he prepares the graves for the burial of the dead, either personally or by his deputies.

Payment of sexton.

The wages of the sexton are regulated by custom, consisting in general of a payment made by the churchwardens out of the church-rate, or similar funds, and of fees paid for burial. The amount of the latter is usually regulated by the vestry.

Dismissal from office.

The sexton is considered to have a freehold in his office, and if he is removed from it without reasonable cause, may be restored by a mandamus. [Reg. *v.* Kingclere, 2 Lev. 18.] He is liable to censure by the ordinary, but, it is said, cannot be dismissed from his office by him. It is said, however, that a custom for the parishioners to remove him at pleasure is good; and perhaps he might in all cases, for reasonable cause, be dismissed by the same person or persons by whom he was appointed. By 19 & 20 Vict. ch. 104, § 9, sextons in parishes formed under the New Parishes Act are to be appointed by the incumbent, and to be removable by him with consent of the bishop.

III.—BEADLES.

The beadle, bedell, or bydel, is (as the name signifies) the bidder, crier, or messenger of the parish. His duty *is to attend* as such upon the officers of the parish, the



rector or vicar, churchwardens, and vestry. The same kind of officer is maintained at the universities, where the bedells attend upon the chancellor or vice-chancellor as mace-bearers, and also in the courts of the bishops, where they are known by the name of "apparitors." The parish beadle is scarcely an ecclesiastical officer; he is rather a constable having authority to keep order within the parish. But his powers are not so extensive as those of a constable. [Cliffe *v.* Littlemore, 5 Esp. 39.]

He is appointed by the parishioners in vestry, and can be dismissed by them at any time for misconduct. Almost the only mark of his office having anything of an ecclesiastical nature about it is that the wages of beadles are payable out of the church-rate. [*Eccl. Law Rep.* 46.]

As a peace officer of the parish, however, the beadle often keeps order in the church and churchyard during Divine Service; and the beadles of the churches built about the Georgian period often act as the "vergers" within the walls of the church. Similar beadles are those provided for by one of the Church Building Acts. [1 & 2 Will. IV. ch. 38, § 16.]

Chapter IV.

VESTRIES.

THE parishioners being accustomed to meet in the vestry of the church for the transaction of parochial business, their representative body has acquired the name of the place in which it assembles, and is called a vestry.

Place of meeting.

When the room has been too small, it has been a common custom for the meeting to take place in the church itself. It may, however, meet in any place to which there is free access; and by 13 & 14 Vict. ch. 57, a separate room may be hired, purchased, or built, for any parish the population of which exceeded two thousand at the preceding census.[1]

Vestries in new parishes.

By 58 Geo. III. ch. 69, § 7, vestry meetings may be held in townships which have separate overseers for the poor, as well as in the mother parish, such meetings consisting of the inhabitants of

[1] This is done by an order of the Poor Law Commissioners; and on the expiration of twelve months from the publication of their order in the *London Gazette*, it becomes unlawful to hold a vestry meeting, or any other parish meeting—unless for an ecclesiastical or charitable purpose, or some purpose approved by the bishop—in the church, or (except under very special circumstances) in the church vestry.



the township only; and by the "Compulsory Church Rate Abolition Act" of 1868, "whenever any ecclesiastical district, having within its limits a consecrated church in use for the purposes of Divine Worship, shall have been legally constituted out of any parish or parishes, and whether such district shall or shall not be a separate and distinct parish," the inhabitants may assemble in vestry and make a church-rate, "as if such church were the church of an ancient parish." [31 & 32 Vict. ch. 109, § 6.][1]

Notice of day, hour, place, and business.

The vestry is to be convened by a public written notice of the day, hour, and place at which it is to meet, which notice must be signed by the incumbent and churchwardens, or any one of them, and affixed on or near to the doors of all churches and chapels-of-ease within the parish on a Sunday (at least before the Evening Service) three full days before the day fixed for its meeting: Thursday being thus the earliest day after the publication of the notice on which the meeting can take place. It is also necessary to state on the notice what is the business to be done at the meeting. [1 Vict. ch. 45, §§ 1, 2, & 3.]

These enactments were passed at a time when church-rates could be recovered compulsorily, and applied therefore to all vestries held for the purpose of making church-rates. It has, however, been ruled, that in new parishes it is not necessary to give the notices required by

[1] In London the vestries are regulated by the Local Management Acts in all parishes which come within their operation: such vestries are not here noticed.



these Acts for holding vestries for the election of churchwardens, such churchwardens having no secular functions [Reg. *v.* Barrow, *Law Rep.* 4 Q. B. 577]; and the principle of this decision would probably be held to apply to vestry meetings called for the purpose of levying voluntary church-rates, or for other such purposes. Indeed, the whole law of vestries, except for the appointment of churchwardens and other parish officers in old parishes, is, for ecclesiastical purposes, almost obsolete.

Chairman.

The incumbent of the parish is, *ex officio*, chairman of the vestry. [Wilson *v.* McMath, 3 Phill. 67; R. *v.* D'Oyly, 12 Adolph. & Ellis, 139.] In his absence, there is no one who is *ex officio* entitled to preside, but a chairman must be elected by the parishioners present. [58 Geo. III. ch. 69, § 2.] Any objection to the person elected must be made before he opens the proceedings, as it cannot take effect at any later time. Whether the person elected be a ratepayer or not is of no consequence to the validity of the proceedings, but the vote of one who is not a ratepayer cannot be counted.

Voters.

The vestry is a meeting of ratepayers, they alone being entitled to take part in its proceedings, although others may be present at them. By 16 & 17 Vict. ch. 65, § 1, and 59 Geo. III. ch. 85, § 3, no person can vote who has neglected or refused to pay any poor-rate made or due three months or more previous to the day of meeting; but nonpayment of a rate made within three months of the day does not stand in the way. This is further modified, as regards church-rate, by the Act of 1868, which enacts that, "No person who makes default



in paying the amount of a church-rate for which he is rated shall be entitled to inquire into, or object to, or vote in respect of, the expenditure of the moneys arising from such church-rate; and if the occupier of any premises shall make default for one month after demand, in payment of any church-rate for which he is rated, the owner shall be entitled to pay the same, and shall thereupon be entitled, until the next succeeding church-rate is made, to stand for all purposes relating to church-rates (including the attending at vestries and voting thereat) in the place in which such occupier would have stood." [31 & 32 Vict. ch. 129, § 8.] But if a person has become liable to be rated since the making of the last poor-rate, he will be entitled to vote as if he had been included in the assessment. [58 Geo. III. ch. 69, § 4.]

Plurality of votes.

The last-cited Statute also enacts, by its 3rd section, that every person assessed on a rental of 50*l.* or upwards shall be entitled to a vote for every 25*l.* further rental up to six votes, which is the largest number that can be used; that where two or more are jointly rated, one of them may vote, according to the number of votes jointly possessed. By 59 Geo. III. ch. 85, § 2, it is also provided that corporations and companies may vote by their secretary, clerk, steward, or other duly authorised agent.

Manner of voting.

The vestry being open to all ratepayers, those who are not present are bound by its acts as if they had been present, (their absence being voluntary,) however small the number of voters present may be. The voters are to be taken by show of hands,

but any ratepayer has a right to demand a poll after the result of a show of hands has been declared. [Campbell *v.* Maund, 5, Adolph. & Ellis, 865.] It must be remembered that a show of hands may not indicate the number of votes that might be given even by those present, and that a poll is the only effective manner of obtaining a record of all the votes in a large parish. [White *v.* Steele, 12 C. B. (N. S.) 406.]

Casting-vote.

It is enacted, by 58 Geo. III. ch. 69, § 2, that in all cases of equality of votes, the chairman, in addition to his vote according to his assessment, shall have the casting-vote.

Time and place of poll.

The chairman also has the power of appointing the time and place at which, and the time during which a poll shall take place. Nor is this right affected, although the churchwardens may have already fixed a time and place previously in the notice by which the vestry was summoned.

Adjournment.

The right of adjournment also belongs to the chairman. It is generally to be exercised in accordance with the wishes of the majority; but it may be exercised, if necessary—as, for instance, when the proceedings are being disturbed—against their consent. [R. *v.* D'Oyly, 12 Adolph. & Ellis, 139.]

To the chairman also belongs the duty and responsibility of receiving or rejecting the votes tendered. But during the poll he may call in assessors to assist him in deciding on their validity. [R. *v.* Vicar of Wakefield, 7 *Law Times*, 227.]

It is ordered by 58 Geo. III. ch. 69, § 2, that minutes



of the proceedings and resolutions shall be fairly and distinctly written in a book to be provided by the churchwardens; these minutes being signed by the chairman, and by such other parishioners present as choose to do so. It is usual to confirm them at the next vestry, but this is not necessary to their validity. [Mawley *v.* Barbet & Alt, 2 Esp. 687.] If they are confirmed by the next vestry, they are, however, adopted by it, and thus they become binding upon it if they were not so before.

Minutes of proceedings.

In some parishes there exists, by custom, or local Act of Parliament, a representative body called "a select vestry." These vestries have sometimes been confirmed by faculty from the bishop; but it is settled that such a faculty cannot create a select vestry where there is none by custom. These select vestries, as a general rule, entirely supersede the ordinary vestry. But where they exist by statute, the particular Act of Parliament under which they are constituted must be consulted for information respecting them. Where they exist by custom, they are subject to the same principles of law by which ordinary vestries are regulated.

In large towns select vestries may be appointed under the Act 1 & 2 Will. IV. ch. 60.



Book V.

CHURCHES AND CHURCHYARDS.

Chapter I.

THE ACQUISITION OF CHURCHES AND CHURCHYARDS AS ECCLESIASTICAL PROPERTY.

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IT is a principle of the canon law that no church can be erected without the permission of the bishop of the diocese in which it is to be situated. This principle was declared to be one of English canon law by the 12th of the canons passed at Westminster in the year 1138, which forbids "any man to build a church or oratory upon his own estate without the bishop's licence." [Johnson's *Eccl. Laws.*] When the papal power was strong in England, endeavours were made to override this rule in favour of churches which should be exempt from any episcopal authority but that of the Pope; and the local authority of the bishop, as against that of the Pope, was

Churches not to be founded without the bishop's permission.



frequently opposed by the Crown and the great landlords. The rule, however, eventually prevailed against the laity, after they lost the support of the papal power—since the law takes no notice of a church until it is consecrated, since there is no means by which a bishop can be compelled to accept a building for sacred use and consecrate it, and since he can only so accept it for consecration on certain conditions, to which he is bound by law and custom. The erection of such exempt or "free" churches is also further limited by the law which forbids a clergyman to officiate publicly in any building which is not either consecrated or licensed for Divine Service by the bishop.

Hence it is plainly necessary, as well as right, that the bishop's sanction should be obtained before any steps are taken towards the actual erection of a church, although a scheme and plans may, of course, be previously prepared without any impropriety. By the law of England, after the Statutes of Mortmain, no land could be consecrated without the consent of the Crown and the lord of the fee; and, practically, so many difficulties arose as to the power of conveying land to be consecrated, even with these consents, and the uncertainty in whom the freehold of such land would vest, that it became impossible to build a new church without an Act of Parliament; and till the passing of the first Church Building Act [58 Geo. III. ch. 45], local or private Acts were procured whenever churches were built. Now, under the provisions of the various Church Building Acts, the Ecclesiastical Commissioners, without the consent of the bishop of the diocese, may take

conveyances of lands, and may authorize the building of churches and the division of old parishes.

§ 1. *The Site.*

Freehold essential.

It is absolutely necessary that the site to be used for a consecrated church or churchyard should be freehold, so that the donation of it to the church may be of an irreclaimable kind. Should there be any flaw in the title of the land, all subsequent proceedings will be useless, it being the duty of the bishop to decline to consecrate any building or land of which there is the slightest risk that it will not belong in perpetuity to the Church. In practice, most of these matters are settled by the Ecclesiastical Commissioners, and they will always require that the title of the donor to the land to be consecrated be properly and sufficiently made out; although they are, by various statutes, empowered to take, and when taken to keep, land to which a strict title is not made out.

Examination of title.

Bequests restrained by Statute.

Bequests of land, or of money for the purchase of it, for the site of a church or churchyard, are, quite independently of the old Statutes of Mortmain, void, under 9 Geo. II. ch. 36; but an Act of 1803 permits such bequests to be made, provided they do not exceed five acres in land, or 500*l.* in goods and chattels, and provided the will is executed at least three months before the death of the testator. [43 Geo. III. ch. 108; 51 Geo. III. ch. 115.]



And many provisions, exempting devises and conveyances of land or bequests, by will, for purchasing or repairing churches, or augmenting the stipends of the clergy, from the operation of the Statutes of Mortmain, and of 9 Geo. II. ch. 36, are made by the various Church Building and New Parishes Acts.

But permitted under some special provisions.

Sites for churches and churchyards which are conveyed to the Ecclesiastical Commissioners under 6 & 7 Vict. ch. 37, and 7 & 8 Vict. ch. 94, are, by 19 & 20 Vict. ch. 104, § 23, vested in the incumbent.

Sites conveyed to Ecclesiastical Commissioners.

§ 2. *The Building.*

There are no laws relating specially to the building of churches, as distinguished from other edifices; but as it rests with the bishop whether or not he will accept a building for consecration as a church, all plans should be submitted to him for his sanction.

§ 3. *Consecration.*

The separation of buildings from domestic or secular use, and their appropriation as places for Divine Service, is a practice coeval with Christianity, and is said by St. Clement of Rome, who wrote in the time of the Apostles, to have been a practice ordained by Christ Himself.[1]

[1] In the very earliest years of Christianity there were, doubtless, "upper rooms" in dwelling-houses [Acts i. 13; ix. 37; xx. 8], such as the Σεμνεῖα spoken of by Philo among the Egyptian Christians [Euseb. *Eccl. Hist.* ii. 17], or the room with a gilt ceiling described



[Clem. *Ep. to Corinth.*, i. 40.] The dedication of such separated buildings to sacred use by a specific act would naturally follow, and is shown by good evidence to have done so. Eusebius records [Euseb. *Eccl. Hist.* x. 3] that when the Dioclesian persecution had ceased, the festivals of dedication were held in every city, and "the consecrations of the newly-built houses of prayer" [*νεοπαγῶν προσευκτηρίων ἀφιερώσεις*]. He also gives us, in full, the discourse which he himself preached at the consecration of the great church of Tyre, which had been rebuilt by its bishop, Paulinus [Euseb. *Eccl. Hist.* x. 4]; and in his 'Life of Constantine' he minutely describes the building and the consecration of the splendid church called the 'Martyrium,' which that emperor built at Jerusalem. [Euseb. *Life of Constant.* iv. 41–46.] In the year 376, St. Gregory of Nazianzum speaks of the consecration of churches as an "old law," referring in the same terms also to the annual commemorative festival of dedication [Greg. Naz. *Orat.* xliii.]; and the evidence continues equally clear down to the time when the Office for Con-

as the worshipping-place of Christians in Lucian's 'Dialogues.' [Lucian, *Philopatris.*] But early in the second century St. Ignatius bids the Magnesians go "into the temple of God" [Ign. *Ep. to Magn.* vii.]; while, later on in the same century, Clement of Alexandria distinctly speaks of churches in our modern sense, and gives instructions as to behaviour when "going to church," and when "out of church." [Clem. Alex. *Strom.* iii. 4.] Tertullian, Hippolytus, and other writers of the following century, often speak of the "temples of God," and this is the term most frequently used by Eusebius also. Much information on the subject is given by the learned Mede in his 'Treatise concerning Churches and the Worship of God therein.' [*Mede's Works*, p. 319: Ed. 1677.]



secration appears in early Pontificals [Egbert's *Pontif.*, Surtees Soc. Ed. pp. 26–40], and when ritual writers like Walafrid Strabo [A.D. 830] speak of the custom as of one long familiar to the Church. [Walafr. Str. *De rebus Eccl.* IX.]

The records of consecrations in early English times are by no means scarce. That of Ripon Minster by St. Wilfrid —when Egfrid, King of Northumbria, was present—in the middle of the seventh century, is given in the ancient *Life of St. Wilfrid;* that of the Church of Ramsey [A.D. 972] in the early *History of Ramsey.* That of Winchester Cathedral [A.D. 967] is in the *History of the Benedictine Order;* and others are to be found in the *Monasticon Anglicanum,* and in Tanner's *Notitia.* At Jarrow on the Tyne there is also preserved the stone on which the record of the consecration is engraved, and which is dated in the fifteenth year of King Egfrid [A.D. 685]. A similar stone, of apparently even earlier date, was discovered some years ago at Ipswich; while others, of 1192, 1344, and 1533, remain at Clee, Rolvenden, and St. Sennen.

English canon law on the subject begins with the 'Excerpts' attributed to Egbert, and compiled in the eighth century. The 139th of these reproduces a canon of Vigilius, Bishop of Rome, in A.D. 537: "If the altar be taken away, let the church be consecrated anew; if the walls are only altered, let it be reconciled with salt and water. If it be violated with murder or adultery, let it be most diligently cleansed and consecrated anew."[1] [Johnson's *Eccl. Laws.*]

[1] Reconciliation, however, rather than reconsecration, appears to have been the common English custom. [Sir R. Phillimore, Eccl.



The 2nd canon of the Council of Cealc-hythe, or Chelsea, (held in A.D. 816), decrees: "When a church is built, let it be consecrated by the bishop of its own diocese; let the water be blessed and sprinkled by himself; and let all things be thus accomplished in order, according to the ministerial book. Afterwards let the Eucharist, consecrated by the bishop in the same ministration, be built up with the other relics in the cavity of the altar, and preserved in the same church; and if he can find no other relics, this shall be quite sufficient, for it is the Body and Blood of Our Lord Jesus Christ. And we charge every bishop, that he have it written on the wall of the church, or on a tablet, or even on the altars, to what saints they are dedicated." [Hadd. & Stubbs, *Counc.* iii. 580.] After the Conquest, some canons were passed at a Council held at Winchester in A.D. 1071, the 8th of which ordained that Divine Service should not be celebrated in any churches until they had been consecrated by the bishop. In the thirteenth century it was ordered, in the first of the Legatine Canons of Otho [A.D. 1237], that all cathedral, conventual, and parochial churches should be consecrated within two years of their completion; and in those of Othobon [A.D. 1268, thirty years later], it was decreed that application for consecration should be made to the bishop of the diocese within one year. [Johnson's *Eccl. Laws.*][1] And

Law, p. 1773.] It is not now the practice to require a reconsecration when the altar is taken away. [Parker *v.* Leach, *Law Rep.* 1 P. C. 312.]

[1] Some diocesan constitutions on the subject may be found in Wilkins's *Concilia*, i. 624, 666; ii. 138, 501.



when neglect was shown by Spridlington, Bishop of St. Asaph, in performing this duty, a mandate was sent to him from the Archbishop of Canterbury [A.D. 1377], strictly enjoining him to make enquiry as to what churches were in use without being consecrated, and immediately to perform the rite. [Wilkins's *Conc.* iii. 122.]

There is no doubt, therefore, that churches built in England before the Reformation were always consecrated. The practice was objected to by the Puritans, but it does not appear that it was ever discontinued. Hooker, in defending it, says that the solemn dedication of churches serves "to surrender up that right which otherwise their founders might have in them, and to make God Himself their owner. When we sanctify or hallow churches, that which we do is only to testify that we make them places of common resort, that we invest God Himself with them, that we sever them from common uses." [Hooker's *Eccl. Polity*, V. xii.]—expressions which show that he was writing respecting an existing custom. But, as Hooker satirically remarks, it could not "be laid to many men's charge" in that age, that they were either "so curious as to trouble bishops with placing the first stone in the churches they built, or so scrupulous, as, after the erection of them, to make any great ado for their dedication;" and few churches can be traced to the time between Elizabeth and Charles I.[1] The principles of the law, however, remained

[1] On the tower of Barholme Church, finished in 1648, is an odd inscription, illustrating this point in the later reign:—

"Was ever such a thing since the Creation?—
A new steeple built in the time of vexation!"



unaltered, and Lord Coke says that it takes no notice of churches or chapels until they are consecrated by the bishop. [Coke's *Inst.* iv. 203.] Stow gives an account of the consecration of Fulmer Church by Bishop Barlow in A.D. 1610 [Stow's *Annals*, p. 997], and also a list of nine other churches which were built and consecrated between 1605 and 1619: while additional instances are on record elsewhere, of churches consecrated by Bishops King, Andrewes, Laud, and Montague; and of the rebuilt church of South Malling, in which Archbishop Abbott stopped the performance of Divine Service, by interdict, because it had not been reconsecrated. In 1634 the 43rd canon of the Irish Church ordered that, "As often as churches are newly built, where formerly they were not, or churchyards appointed for burial, they shall be dedicated and consecrated." [Wilkins's *Concil.* iv. 506.]

Form of Consecration.

The revival of church-building thus drew the attention of the bishops to the necessity of an authorized Form of Consecration. Each bishop had been accustomed to use his own. That of Bishop Barlow is given in Stow's 'Annals,' that of Andrewes has been frequently printed, and that of Laud is to be found in Rushworth's Collections. In the year 1640 a Form was drawn up and passed by the Convocation of Canterbury, which was to have made part of an authorized Pontifical for the use of the bishops, but it was never published. [Cardw. *Synod.* pp. 576 *n.*, 613.] Another was prepared by Bishop Cosin for insertion in the Book of Common Prayer in 1661, but this also fell through. [Cardw. *Synod.* pp. 668, 677.] In Queen Anne's reign, in



1712, a third was prepared, but never received the royal assent. [Phillimore's *Eccl. Law*, p. 1762.] In the following reign the king gave his licence for (among other things) "preparing a Form for consecrating churches and chapels;" and that prepared in 1712 was accordingly revised by the Convocation of Canterbury. [Cardw. *Synod.* pp. 819–825.] It never received full authority, but is substantially the Form now used in the Church of England.

The consecration of a church by this Form consists of three acts: *first*, the Oblation of the land and buildings by the founder or founders; *secondly*, the Benediction of them by the service appointed; *thirdly*, the solemn sentence of Dedication and Consecration.

[1.] The *Oblation by the founder or founders* is made before the service begins. After assenting to the petition made to him, that he will consecrate the church, the bishop walks in procession to the altar, the 24th Psalm being sung. As soon as he has seated himself in his chair before the altar, the instruments of conveyance, donation, or endowment are presented to him by the founder or his substitute. These deeds are then laid upon the altar by the bishop, as the representatives of the material land and fabric; a similar ceremony having been used, from the very first ages of the Church, in the oblation of gifts which could not themselves be laid there.

[2.] The *Benediction of the land and buildings* so offered to God then takes place, the service consisting partly of special prayers relating to the occasion, and partly of the ordinary service of Morning Prayer and Holy Communion.

[3.] The *Sentence of Consecration* is pronounced after the Offertory, including the offering represented by the deeds upon the altar, has been made. This is read by the chancellor of the diocese, the bishop sitting in his chair during the reading. The following is a copy of this instrument, as used on the occasion indicated:—

"In the Name of God, Amen. Whereas in and by an humble petition, bearing date the fifteenth day of October instant, presented unto us by Thomas Combe, Esquire, of the University Press, Oxford, M.A., it is set forth that by deed dated the eighth day of May last [made under the authority and for the purposes of the several Acts of Parliament known as the 'Church Building Acts'], George Ward, of the City of Oxford, the owner of the land by the said deed conveyed, did freely and voluntarily, and without any valuable consideration, give, appoint, grant, and convey unto the Ecclesiastical Commissioners for England and their successors, all that piece of land, containing one thousand six hundred and ninety-two square yards, or thereabout, situate at Jericho, in the parish of Saint Thomas the Martyr, in the City of Oxford, and forming part of two closes of land, containing, together, one acre two roods and thirty-six perches, bounded on the north-west and south-west by other land belonging to the said George Ward, on the south-east by a street known as Cardigan Street, and on the north-east by a street known as Canal Street, as delineated on the plan in the said deed, to hold [free from land-tax and tithe-rentcharge] to the said Ecclesiastical Commissioners



and their successors for the purpose of the Church Building Acts, to be appropriated as and for the site of a new church, with surrounding yard and inclosure thereto, to be called 'Saint Barnabas Church, Oxford,' and to be devoted, when consecrated, to ecclesiastical purposes for ever, according to the said Acts; that a new church has, accordingly, been erected by the petitioner, the said Thomas Combe, at his own expense, upon the land conveyed by the said deed, and which, although therein described as in the parish of Saint Thomas the Martyr, is locally situate in the district of Saint Paul, in the said City of Oxford, having been separated from the said parish of Saint Thomas by the Order in Council whereby the said district of Saint Paul was constituted; that the same church, having been properly adorned and appointed, is ready to be consecrated; and that the requisite measures are about to be adopted for procuring the assignment of a local district to the said new church, and for it being constituted a separate benefice; and the said petitioner, therefore, humbly prayed as in his said petition is set forth.

"Now we, Samuel, by Divine permission Lord Bishop of Oxford, being willing to comply with this reasonable and pious prayer, do, by these presents, by our Ordinary and Episcopal authority, separate for the future the said newly-erected church from all common and profane uses, and do consecrate the same as a new district church for the worship of Almighty God, the administration of the Sacraments, the reading of prayers, and preaching the Word of God purely, sincerely, and for performing all

other religious ceremonies according to the Liturgy of the United Church of England and Ireland; and we do hereby dedicate the said church to 'Saint Barnabas,' the site of which said new church and the boundaries thereof are more particularly delineated and set forth in the plan drawn in the margin of these presents: Saving, nevertheless, unto ourself and our successors, our episcopal rights and privileges herein; and saving likewise to all bodies politic and corporate, and to all persons whomsoever, the respective claims to which they or any of them were entitled before passing of this our definite sentence and final decree which we make and promulgate by this present writing: Warning all men that they think not lightly of our solemn ordinance and decree, whereby these holy places are for ever set apart and consecrated unto Almighty God.

"Signed and published in the Church of Saint Barnabas, Oxford, aforesaid, this nineteenth day of October, in the year of Our Lord one thousand eight hundred and sixty-nine, and in the twenty-fourth year of our consecration.

"S. OXON.

"*Quod Attestor,* JOHN M. DAVENPORT,
"*Notary Public.*"

When it has been read, the bishop signs the instrument before the notary public, and orders it to be enrolled by his registrar, and preserved amongst the muniments in his registry.

The consecration of a churchyard is of a similar character.



Special provisions for facilitating the conveyance of sites for churchyards, and diminishing the expense of consecrating them, have been made by 30 & 31 Vict. ch. 133, amended by 31 & 32 Vict. ch. 47.

§ 4. *The Status of Consecrated Land and Buildings.*

When a church or churchyard has been thus consecrated, it ceases absolutely and entirely to be the property of the donor, and he has no longer any legal interest in it whatever. That which would have been his property has now become the house of God, belonging neither to him, nor to the parishioners for whose use it is intended, but to God. That which is so transferred to God cannot be alienated from Him without sacrilege.

No longer property of the donor.

Subject to such a principle, the estate in a consecrated church and churchyard is one of freehold, of which the fee-simple is in abeyance — the immediate freehold passing from one holder to another by presentation, institution, and induction.[1] The

Fee-simple in abeyance.

[1] The freehold of the chancel is in the rector, and the possession in the incumbent, whether rector or vicar. It seems that a perpetual curate has not usually more than the right to possession of the church and churchyard. [Greenslade *v.* Darby, 3 *L.R.* (Q.B.) 421.] There are a few cases—those of churches built under 5 Geo. IV. ch. 103, § 14, and 1 & 2 Will. IV. ch. 38, § 9—in which the freehold was vested in trustees; but the old principle of the common law was confirmed by 8 & 9 Vict. ch. 70, § 13, by which all sites and churchyards conveyed to the Ecclesiastical Commissioners before consecration are, after consecration, vested in the incumbent. See also 19 & 20 Vict. ch. 104, § 10.



object for which possession of the freehold is given to the incumbent is that he may have the entire control of the use of the church and churchyard, according to the ecclesiastical laws under which they are to be used—that he may be free to use the one for Divine Service, and restrict the other to the burial of the dead, guarding both from profane uses. Subject to this, however, the rector or vicar has the right to the herbage growing in the churchyard, or the fruits of the trees therein.

The appropriation of any portion of a churchyard to secular use, even though such use may be greatly for the public benefit, cannot be effected without an Act of Parliament. [Harper *v.* Forbes and Sisson, 5 *Jurist,* N.S. 275; Archd. of Norwich *v.* Churchwardens of St. Augustine's, Norwich; *Eccl. Gaz.,* Nov. 1874.]



Chapter II.

CHURCHES AND ECCLESIASTICAL PERSONS.

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§ 3. *The Curate* . . 327

WHEN churches and churchyards are consecrated, they are placed in peculiar relations to the clergy, which it will be convenient to notice separately, as regards the bishop of the diocese, the incumbent of the church, and the licensed curate who is assistant to the latter.

§ 1. *The Bishop.*

The jurisdiction of the bishop of the diocese extends over the whole of every consecrated church and churchyard. The ministrations which are carried on there are carried on by his authority, as having the primary cure of souls throughout his diocese, and he has an inherent right to take part in them at any time. He is also, in the highest degree, the guardian of every consecrated place and building within his diocese; and having the right of visitation whenever he chooses to exercise it, he has thus the right of access. It may, in fact, be said, that as the incumbent is the deputy of the bishop, so the latter

has, in a primary degree, all the rights which belong to the former, so far as they are associated with the performance of Divine Service. These rights are ordinarily, however, held in abeyance, and only exercised when the incumbent is set aside by suspension or sequestration.

§ 2. *The Incumbent.*

Incumbent's freehold rights in church land and buildings.

By his induction into the real and corporal possession of his benefice in general, a rector or vicar becomes invested, in particular, with freehold rights in all the land and buildings which are enclosed within the churchyard fence or wall. The site and fabric of the church, with all that is permanently attached to that fabric, are thus, in the eye of the law, the property of the incumbent for the time being;[1] so that all actions brought against persons for damaging or carrying away anything belonging to the church or churchyard must run in his name as the legal owner.[2]

His sole right of access.

The rights thus acquired carry with them the exclusive right of access to the church, and also (saving any established right of way) to the churchyard; so that none can lawfully exclude him from any part of them, nor any enter them of their own

[1] There are, however, some exceptional cases of private freehold chapels forming part of a parish church. For the law respecting these see Chapman *v.* Jones, *Law Rep.*, 4 Exch., p. 273; Heales' *Law of Church Seats*, § 429; Sir R. Phillimore's *Eccl. Law*, p. 1778.

[2] The repair of the chancel by the incumbent when he is a rector is a duty imposed upon him by custom—not as the possessor of the freehold. [Gibs. *Cod.* 225; Griffin *v.* Dighton, 33 *Law Journ.* (N.S.), Q. B. 29, 181.]



right, but only by his permission, so long as he is incumbent. When he is inducted, the keys of the church are assigned to him, by the ceremony of laying his hand upon some of them [page 241], and all of them are henceforth his property. Hence in the archdeacon's annual "Articles of Enquiry," the churchwardens have to answer "upon their solemn and sincere declaration," to the question, "Is the key of the church kept where the minister directs?" This right of the incumbent has been previously mentioned, in connection with the duties of churchwardens [page 271]; and many cases are there referred to in which the right has been supported by ecclesiastical judges.

Lay rector and key of chancel.

That a lay rector cannot exclude the incumbent from the chancel, though he has, perhaps, a right of entry to it himself, was ruled by the Exchequer Chamber in 1864, on appeal. Chief Justice Erle said that this was an action of trespass brought by the impropriator against the vicar, for taking off locks from a door leading into the body of the chancel, which locks were claimed by the rector to be his property; and the substance of the plea was, that the defendant, as vicar, claimed the right of access to all parts of the church, and to pass in and out through all the doors of the church; and if the rector put a lock upon the door to prevent his passing through, the vicar had a right to put an end to the obstacle, and had a right to enter at all times; and the defence on the part of the vicar was held to be valid, and he was of opinion that the judgment of the court below ought to be affirmed. He did not go into

any question of rights of property varying in different parishes, but to meet that only which was involved in the consideration now before the court, which was a claim of right on the part of the minister who had duties to perform in the church; and he did not think he could express the rights of the vicar better than in the language used by Sir John Nicholl, quoted in the court below:—"All parties ought to understand that the sacred edifice of the church was under the protection of the ecclesiastical law as administered in the ecclesiastical courts, and that the possession of the church is in the minister and churchwardens, and that no person has a right to enter at the door during the time Divine Service is going on." He was of opinion that that was the sound exposition of the law, that the minister and churchwardens had possession of the church at all times. The chancel was the place to which the minister ought to have access at all times. The judgment should be affirmed. [Griffin *v.* Dighton, 33 *Law Journal* (N.S.) Q.B. 181.]

Churchwardens' claims to keys.

A dictum of Sir John Nicholl has sometimes led to the belief that the churchwardens have a right of access, by keys of their own, as well as the minister; but this claim, also, has been judicially refuted. In 1868 a churchwarden wished to enter a church for the purpose of altering some arrangements made by the incumbent, and demanded the keys from the latter. The incumbent refusing to give up the keys, but offering access, the churchwarden called a vestry, by whose authority he picked the lock of the church-door. A suit was instituted against him in the Court of Arches,



when the judge decided, unhesitatingly, that "the vestry had no power to clothe a churchwarden with an authority not inherent in his office," and that such an authority as he had exercised was not inherent in it. "It has been endeavoured," said Sir R. Phillimore [Ritchings *v.* Cordingley, see pages 271, 279], "to extract from this language of Sir John Nicholl, in Jarratt *v.* Steele [3 Phill. 167], the position that the freehold of the church is in the churchwardens as well as in the incumbent; or, at least, that the custody of the church is equally vested in both parties, and therefore that the churchwardens must be entitled to the keys of the church equally with the incumbent. But this is a position which even the letter of the judgment does not warrant, and which is directly at variance with the common law and a series of decisions upon the subject—and most especially with the decision of the same learned judge in the later and very carefully considered case of Lee *v.* Matthews. Observe his language in this case. 'On the other hand,' he says, 'the minister kept possession of the keys of the church, and, as it would seem, in order to prevent this painting at that particular time; and surely the minister of the parish is the fittest person to decide at what season the public worship may be suspended, with least inconvenience to the religious duties of the parishioners. This vestry was called for the purpose of ordering an *additional key of the church* to be made for the use of the parish churchwarden. This was very irregular, for the minister has, in the first instance, the right to the possession of the key, and the churchwardens have only the custody of the church under him.

If the minister refuses access to the church on fitting occasions, he will be set right on application and complaint to higher authorities.'" [Lee *v.* Matthews, 3 Hagg. 173.] "The same doctrine," added Sir R. Phillimore, "is referred to by Dr. Lushington, in the recent case of Dewdney *v.* Good, as one of the best-established axioms of ecclesiastical law." [7 *Jur.* (N.S.) 637; 19 *Law Times* (N.S.) 26.]

Access to the vestry.

The vestry is as entirely under the control of the incumbent, with regard to access, as any other part of the church. This was ruled by the Court of Queen's Bench in 1867, when a churchwarden of Luton applied for a mandamus to the justices of Luton, ordering them to adjudicate on a charge of assault brought against the vicar for excluding him from the vestry. The application was refused by the court, Mr. Justice Blackburn remarking, that "it would be an error to imagine that a churchwarden had necessarily at all times a right to enter the vestry," and that "the vicar might not lawfully resist his entry," if the churchwarden wished to force himself in at improper times, or for improper purposes. [*Eccl. Gaz.*, Dec., 1867.] An opinion was also given by Sir R. Phillimore and Sir J. D. Coleridge, in 1860, with respect to the external vestry-door, that the freehold of the church being vested absolutely in the incumbent, he has "the right to the use of a private door, of which he alone may keep the key, through which door he has a right to prevent any one he pleases from entering the church, so long as he allows to the parishioners means of access reasonably

From within.

From without.

sufficient at times when they have a right to be in the church." [House of Commons' Papers relative to St. George's-in-the-East.]

The belfry is not less under the control of the incumbent than other parts of the church. Access cannot be had to it, nor can the bells be rung, without his consent: and if the bells are rung after he has forbidden the ringers to ring them, very serious consequences may result to the ringers. In 1862 the Vicar of Thurnby prosecuted the churchwardens, parish-clerk, and other parishioners, for breaking open the belfry-door and ringing the bells, to commemorate a meet of hounds in the village, when he had forbidden them to ring, and had locked the door of the belfry. It was laid down by Dr. Lushington, the judge, that the freehold of the church being in the incumbent, and the custody of all the keys belonging to him, his consent was essential to any ringing of the bells. The ringers were therefore admonished, and condemned in costs; and, being unable to pay the latter, remained in prison for five weeks until other persons had paid them. [6 *Law Times*, 580; *Eccl. Gaz.*, July, 1862.] Sir R. Phillimore ruled similarly in Daunt *v.* Crocker and others, in 1867. [2 *Law Rep.*, Adm. and Eccl. 41.]

Access to the belfry.

The freehold rights of the incumbent in the church and churchyard are not, however, given to him for his sole use, as in the case of the freehold rights belonging to the glebe. On the contrary, they are confided to him as a trust for certain well-defined purposes; and for these purposes he is bound to

Proper access to be permitted

give access. Thus he must permit access to the church for Divine Service, and to the churchyard for burial. He must also permit access to it for proper cleansing and repair; for such duties as devolve upon the churchwardens with respect to the goods of the church, and the parish books; for vestry meetings, and for such use of the bells as is consistent with the purpose for which they are placed in the belfry.

Monuments and tombstones.

Monuments or tombstones cannot strictly be placed in churches or churchyards without the consent of the ordinary. Lord Stowell said: "There can be no question as to this, that no monument can be erected without the leave of the ordinary." [Maidman *v.* Malpas, 1 Hagg. Cons. 207.] The reason given by the judge is that the fabric of the church has been committed to the ordinary, and is not to be defaced at the caprice of individuals. The incumbent, however, having the fabric of the church under his control, is, in practice, enabled to sanction the erection of ordinary monuments and memorial inscriptions, and his consent will commonly represent that of the ordinary. Lord Stowell, in the case above cited, declared that the court would act improperly if it was to say that parties might erect a monument without leave of the rector; and he allows that faculties for monuments are rarely required, "for the ordinary usually reposes confidence in the minister to do what is proper."

The sanction of the ordinary overrides any objection of the incumbent [Bulwer *v.* Hase, 3 East, 117]; but without the sanction of one or the other, no person has any



authority to erect a monument in any part of a church or churchyard.

Such sanction of a monument or tombstone includes, of course, both the design and the inscription. If either of them are such as ought not to appear in a church or churchyard, they should be rejected by the incumbent, when, if the persons wishing to place them there are dissatisfied, they can appeal to the ordinary, and from him to the court of the archbishop. [Bulwer *v.* Hase, 3 East, 217.] And although the property of a monument in a church, or a tombstone in a churchyard, remains in those who erected them, and in the heirs of the deceased, so that they may bring an action against any persons who injure or remove them, it may be removed by order of the ordinary, if it has not been erected under the authority of the incumbent, or that of a faculty.

The herbage and underwood of the churchyard belong to the incumbent. The paths are a right of way for the parishioner, and can only be altered, as a rule, by the ordinary, and the ordinary will not act without the consent of the incumbent being at least asked [Walker *v.* Mountague, 1 Curt. 260]; except in special cases, provided for by 59 Geo. III. ch. 134, § 39, where the Ecclesiastical Commissioners may do so under the authority of two justices of the peace.

The arrangements for Divine Service are under the absolute control of the incumbent, subject, of course, to the laws laid down in the Prayer Book and elsewhere. It is for him to decide whether there shall be any services beyond the

Incumbent's control over Divine Service.



morning and evening, and whether the Holy Communion shall be celebrated at the same time when morning prayer is said, or whether they shall form separate services. The hours of Divine Service are also to be fixed by the incumbent.

But, above all, it rests with the incumbent to control all those parts of Divine Service which are not actually performed by the clergy. Thus Lord Stowell decided—in a case where the churchwardens instituted a suit against their clergyman for obstructing the singing of the school-children by introducing the accompaniment of an organ—that "the minister has the right of directing the service; *e.g.*, when the organ shall and shall not play, and when the children shall and shall not chant, though the organist is paid and the children managed by the churchwardens." [Hutchins *v.* Denziloe, 3 Phill. 90, 1 Hagg. 175.] "They must complain to the ordinary if he introduces irregularities into the Service." [Wilson *v.* Macmath, 3 B. & A. 250.] More recently Sir Robert Phillimore gave a similar decision, issuing a monition to an organist who resisted the incumbent's right, and condemning him in costs. [Wyndham *v.* Cole, *Eccl. Gaz.* Nov. 1875.] In the case of St. George's-in-the-East, the Bishop of London declared: "The law allows an incumbent to have a choral rather than a read service, if he pleases; and though I may highly disapprove, as I do, of forcing a choral service on an unwilling parish, I can only remonstrate: I have by law no power of forbidding, or, if I forbid, of enforcing obedience to my mandate." [*Eccl. Gaz.*, Sept. 1859.]

Organ and singers.

Choral service.

Similar language was uttered at a later date by the Bishop of Lichfield in the case of St. George's, Wolverhampton. [*Eccl. Gaz.*, Jan. 1870.] It seems also to be allowed, that if the organ is locked up to hinder it from being used in Divine Service, the incumbent has authority to break it open, having entire control over it, whether for use or disuse in any service, at any time, and by whomsoever the organist may be paid. [Eyre *v.* Jones, *Eccl. Gaz.*, Jan. 1870.]

§ 3. *The Curate.*

A curate has no rights of his own over a church or churchyard, but he is the natural representative of the incumbent in his absence. He has, however, rights as minister of Divine Service; and it is presumed that he could legally claim to exercise as of his own right, in the absence of the incumbent, all those rights respecting it which are mentioned in the preceding section.

Chapter III.

CHURCHES AND SECULAR PERSONS.

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§ 3. *The Parishioners* . . 329

§ 1. *The State.*

ALTHOUGH churches are public buildings, and churchyards public places, no special rights or duties respecting them belong to the civil authorities, except in one particular—that of burial.

Burial of suicides in churchyards.

In the cases of suicides against whom the jury return a verdict of *Felo de se*, the Act of Parliament [4 Geo. IV. ch. 52, § 1] requires that they shall be buried "in the churchyard, or other burial-ground of the parish, or place in which the remains of such persons might, by the laws and customs of England, be interred, if the verdict of *Felo de se* had not been found against such person,—such interment to be made within twenty-four hours from the finding of the inquisition, and to take place between the hours of nine and twelve at night." In such cases, therefore, the coroner's order for burial is not merely a release of the



dead body from the custody of the Crown; but it enforces burial in the churchyard, and within the limits of the three hours before midnight. The 2nd section of the same Act expressly declares, however, that it does not authorize the use of the Burial Service, and hence it does not in any way affect the rubric respecting suicides. [See page 181.]

Churchyards, in common with any other burial-grounds, may be closed against burial by order of the Queen in Council, under the Acts 15 & 16 Vict. ch. 85, within the metropolis, and 16 & 17 Vict. ch. 134, elsewhere. Any person assisting at a burial in a churchyard so closed is liable to a penalty of 10*l.* [18 & 19 Vict. ch, 128, § 2.] Where brick graves or other vaults exist, however, it is in the power of the Secretary of State for the Home Department to issue a licence, permitting the burial of persons in their family graves. [16 & 17 Vict. ch. 134, § 4.]

Closing of churchyards.

Burial in closed churchyards.

§ 2. *The Churchwardens.*

The rights and duties of churchwardens, as regards churches and churchyards, have been fully reviewed in the chapter respecting them, to which the reader is referred. [See pages 261–273.]

§ 3. *The Parishioners.*

Every person within the parish in which a church is situate has a common-law right to the use of it in time of



Divine Service. This right has been defined in an opinion given by Sir Robert Phillimore and Lord Coleridge, as that of being "present within it at all times when the public worship of God, or religious ceremonies which are by law public ceremonies, are going forward." [House of Commons' Papers relating to St. George's-in-the-East, 1860.] Much more have they a right to the use of the church when they are to be present for the performance of any of its offices as regards themselves. Hence the incumbent's control over all access to the church is limited by the rights of the parishioners to its use at such times as he may appoint for the celebration of any of the offices contained in the Book of Common Prayer: whether those of public worship—such as the Holy Communion or morning prayer; or whether those of a personal kind, yet performed *in facie ecclesiæ*—such as marriage and churching.

General right to be present at Divine Service,

and ceremonies celebrated "in facie ecclesiæ."

To this general right must be added the particular right of suitable accommodation during Divine Service. This, however, has been noticed in some detail in the section on the duties of churchwardens in assigning seats to parishioners [see page 266], and nothing further need here be said.

Right to seats.

On the parishioners rest the moral and canonical obligation of repairing the whole of the fabric of the church —except the chancel; of providing and keeping fit for use all the *instrumenta* or "ornaments" required for Divine Service; of keeping in order the churchyard, repairing its



wall or fence when necessary; of paying the servants of the church; and, generally, of bearing all the expenses incident to the use of the church, except the maintenance of the ministers and the repair of the chancel.

Book VI.

THE ENDOWMENTS OF THE PAROCHIAL CLERGY.

Chapter I.

INCOMES.

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§ 2. *Glebe Lands* . . . 341 |
§ 4. *Fees, Dues, and Offerings* . . . 345

ENDOWMENTS for the maintenance of the clergy are derived principally from voluntary gifts made for the purpose in ancient and modern times; the *status* of such gifts being that of offerings made to God for the maintenance of Divine Service and of the cure of souls, by means of a ministry to be sustained out of them. They consist chiefly of tithes, glebe-lands, and funded property; a large portion of such endowments being administered by the Ecclesiastical Commissioners, who pay the incomes of the clergy out of the funds which, by force of various statutes passed in order the better to provide for the maintenance of the parochial clergy, have come into their hands.

Status of endowments.



§ 1. *Tithes.*

The dedication of a tenth part of property or income to God is a practice which is traceable as far back as the Patriarchs [Gen. xiv. 20; xxviii. 22]; and the payment of tithes by Abraham to "the priest of the Most High God," seems to show that, from the first, such payments had reference to the maintenance of the ministry. By the laws given to the Jews, tithes became (if they were not so before) a Divine institution [Lev. xxvii. 30; Numb. xviii. 21]; and down to the last ages of the Jewish Dispensation, the tithes paid to the clergy are represented by God as offerings made to Himself [Mal. iii. 8].

Origin of tithes.

This sacred character of the tithe system doubtless led to its adoption in the Christian Church. In the first fervour of Christianity, the Jewish converts gave up all their property for the use of the Church, laity and clergy taking their maintenance out of the common fund so accumulated. But this was a system which could only be carried out under very peculiar circumstances; and as the number of Christians increased, it became both unnecessary and impracticable. At the same time, the clergy were often taken from classes which had no fixed maintenance except what they earned, and were so occupied that they were unable to work at profitable occupations; and hence a necessity arose for contriving some means by which they should be supported from the property and labours of those who benefited by their ministrations. An offertory system, administered by the bishop, appears to have been the earliest contrivance

Christian adoption of tithes.

for this purpose; a common fund being thus formed, out of which was provided alms for the poor, funds for the necessaries of Divine Service, and a maintenance for the clergy. When settled times drew on, in the fourth century, this common fund system began to be broken up, and the maintenance of the clergy began again to be placed upon the definite footing of the tithe system, a system familiar both to Jew and Gentile.[1]

St. Boniface, writing, in the middle of the eighth century, to Cuthbert, Archbishop of Canterbury, speaks of tithes as being then paid in England. In the Excerpts which bear the name of Egbert, Archbishop of York [A.D. 740], the 4th and 5th canons relate to them; the latter one ordering that they should be divided into three parts—for the use of the Church, the use of the poor, and the use of the clergy.[2] The 24th canon speaks of them as of ancient date, while the 99th and 100th give Scriptural and patristic authority for their payment. The 17th canon of the Council, or perhaps Witenagemote, of Chelsea [Cealchythe], held in A.D. 785, also relates to tithes; and from that time there is a continuous stream of legislation respecting them, in such mixed legislative assembles of clergy and laity as the last-named probably was, and also in the separate councils and parliaments of later centuries.

[1] Heathen examples of the payment of tithes may be found in Herod. i. 89, ix. 81; Xenoph. *Cyrop.* v. 3, 9; Diodor. Sicul. xx. 756; Livy, v. 21, 23.

[2] This division was probably universal throughout Europe. St. Gregory mentions it—dividing the portion of the clergy into separate parts, for the bishop and for the inferior clergy—in his Epistle to St. Augustine. [Bede, *Eccl. Hist.* i. 27.]

They appear to have been paid and received in the earlier times of the English Church on the strength of ecclesiastical custom; but at the Council of Chelsea they began to be recognised by the civil power, and established by national law; and so they continued to be during the whole of the mediæval period, the Reformation age, and down to modern times.

Original principle of tithes modified.

But after the earlier ages of the Church, the simple principle of tithes, as a tenth part of every person's income, passed away; and only such income became generally titheable as was derived from things which "yield a yearly increase by the act of God"—such as grain, fruit, cattle, and underwood. Tithes thus became a payment upon agricultural produce, and it is as such mainly that they have ever been the subject of legislation.[1] As lands accrued to the clergy, tithes also formed only a portion of their maintenance. And thus the original principle—which had in view the dedication by all lay persons of a tenth of their annual profits or income to the service of God, and the acceptance of this as the one source from which the clergy were to be maintained—gave way to a law from the direct operation of which large classes of persons are entirely exempt.

Exemptions.

Further modifications of a highly artificial character subsequently ensued. Under the monastic system, large tracts of land became exempted from the payment of tithes for their produce; while, at

[1] Personal tithes or offerings out of the substance of artificers and others have, however, had a limited existence—that is, an existence by custom in certain places, or as offerings at the great feasts.

the same time, monastic corporations received tithes, under the system of appropriations, from a third of the parishes of England, of which only a small portion was devoted to the service of the parishes from whence they were derived, and the rest to the general purposes of the monastery. When monastic property passed into other hands at the Reformation, a still further abuse sprang up, in the system of impropriations, by which tithes became payable to laymen, who provided clergy at very small stipends for the parishes, and used the bulk of the tithes as their own income—thus diverting them, to an enormous extent, from the use for which they were intended.[1] A gradually increasing discontent with the tithe system thus grew up, which was met at the Reformation by Acts of Parliament [27 Hen. VIII. ch. 20, and 32 Hen. VIII. ch. 7] of a very strict character, enforcing their payment.

Appropriations.

Impropriations.

Another source of difficulty in the system arose out of the intricate character which it assumed from the partial nature of its operations. Tithes were classified as prædial, mixed, and personal. Prædial tithes were defined as those which "arise merely and immediately from the ground—as grain of all sorts, hay, wood, fruits, and herbs." Mixed tithes are those which arise "from things immediately nourished by the ground—as colts, calves, lambs, chickens, milk, cheese,

Different kinds of tithes.

[1] *Appropriations* are the assignment of tithes to clerical corporations, whose members, or some of them, are qualified to do the proper work for which tithes are intended. *Impropriations* are the assignment of tithes to laymen who are not so qualified.

eggs." Personal tithes are such profits as arise from labour and industry, "being the tenth part of the clear gain, after charges deducted." Ordinarily the "great," or rector's tithes, are those of corn, hay, and wood; the "small," or vicar's tithes, being the remainder of the prædial, with the whole of the mixed and personal tithes; the two being so denominated, not from the quantity of them in the particular parish, but from their general quality.[1] A very small proportion of the great tithes remained in the hands of the clergy after the Reformation, all that were at that time valuable being transferred to the lay landholders; and the rectorial tithes now held by the clergy are the great tithes of lands that were then waste or worthless, but have since been improved.

The inconveniences attending the assessment and collection of tithes often led to a voluntary system of agreement between incumbents and tithe-payers, by which the former accepted, under the name of "modus," a fixed annual payment, in kind or money, instead of the actual tenth—a capital sum being also sometimes paid in lieu of the annual payment. These voluntary commutations were recognised by the law as soon as they were sanctioned by custom, and were adopted into many local Acts of Parliament as permanent arrangements for the redemption of tithes; but while

Voluntary commutations.

[1] The complications arising out of the development which the tithe system underwent, as crops became more varied and cultivation more scientific, were endless. Towards the close of the last century hothouse fruits became titheable.

they were of a voluntary nature, they could not bind successors, and the inconveniences which they temporarily remedied might revive at any moment.

Commutation Acts.

The voluntary system of commutation was, therefore, superseded, in 1836, by "An Act for the Commutation of Tithes in England and Wales," which substituted an equivalent for tithes in the form of a rentcharge, varying in proportion every year, according to the price of corn. This commutation might be made voluntarily by the persons concerned; but if not done in this manner, it was provided that it should be done compulsorily, by the Tithe Commissioners. It was also provided that clergy entitled to tithes might commute them for land, provided the land did not exceed twenty acres in quantity; but this provision did not extend to impropriators, or lay rectors.[1]

Form of award.

The system of tithes has thus become practically extinct, but the property represented by them is still provided for by an equivalent in the form of rentcharge. The amount of this, which is payable by every occupier of land in a parish, is set forth in the following form, in an "apportionment" which is binding on all the persons interested, and becomes the title-deed on which the rentcharge represented by it may be claimed:—

[1] The Tithe Commutation Acts are 6 & 7 Will. IV. ch. 71; 1 Vict. ch. 69; 2 & 3 Vict. ch. 62; 3 & 4 Vict. ch. 15; 5 & 6 Vict. ch. 54; 9 & 10 Vict. ch. 73; 10 & 11 Vict. ch. 104; 23 & 24 Vict. ch. 93; 36 & 37 Vict. ch. 42. They are extremely voluminous.

APPORTIONMENT of RENTCHARGE in lieu of TITHES, in the Parish of ———, in the County of ———.

Owner.	Occupiers.	No. on Tithe Map of the Parish of	Description.	Quality.	Quantity.	Rent-charge payable to Vicar.	Rent-charge payable to Impropriator.
					A. R. P.	£ s. d.	£ s. d.
Atkinson, John.	Himself	14	Old Field	Pasture	12 3 32	0 15 5	3 14 10
Aubrey, Sir Edw.	Cooper, Geo.	15	Court Farm	Arable & Pasture	348 2 12	21 6 2	62 19 10
Bateson, Emily.	Smith, Jno.	16	Home Close	Pasture	4 0 20	0 4 6	0 19 9
Clark, Edward	Himself & others	93	Adcroft Farm	Arable & Pasture	180 0 14	10 4 0	42 0 3
De Lolme, Lady	Walker, Hy.	106	Moor Acres	Pasture	3 1 15	0 3 1	0 15 0
Long, Moses	Himself	107	Moor Field	Pasture	2 2 17	0 2 10	0 13 8
Smith, John	Himself	108	Oak Field	Pasture	6 3 28	0 11 2	1 8 0
Ward, William.	Himself	109	Elm Field	Pasture	2 1 21	0 3 2	0 13 3
						33 10 4	113 4 7
				Total		146 14 11	

The rentcharge is originally fixed by the clear average value of the tithes for the seven years ending at Christmas, 1835. Thus the original rentcharge is based upon a calculation which estimates the prices of grain as follows [1 Vict. ch. 69, § 7]:—

Mode of fixing the value.

	s.	d.
One bushel of Wheat . . .	7	0¼
„ „ Barley . . .	3	11½
„ „ Oats . . .	2	9

But its amount varies according to the current price of grain, and is estimated by the average prices of wheat, barley, and oats during seven preceding years, which are advertised in January every year in the *London Gazette*. The manner of doing this is provided for by 6 & 7 Will. IV. ch. 71, § 57, which enacts that every rentcharge shall



be deemed to be of the value of such number of imperial bushels and decimal parts of an imperial bushel of wheat, barley, and oats, as the same would have purchased at the rates or prices above mentioned and fixed for this purpose, in case one-third thereof had been invested in the purchase of wheat, one-third in the purchase of barley, and the remaining third in the purchase of oats.

A rentcharge of 100*l.* would thus, according to the standard prices on which the award is based, purchase grain to the following amounts, namely:—

Bushels,		£	s.	d.
94·96	Wheat . .	33	6	8
175·82	Barley . .	33	6	8
242·42	Oats . . .	33	6	8

And the amount of the same rentcharge for any given year will be the sum of money which would purchase that quantity of grain according to the average prices published in the *London Gazette*, as above stated. The rentcharge is, therefore, so much higher, or so much lower, than the sum fixed by the award, according as the authorized averages are higher or lower than the standard prices given in the Commutation Act.

There are special provisions as to tithes of hop-gardens and market-gardens, which are subject to higher charges. [6 & 7 Will. IV. ch. 71, §§ 40, 42; 2 & 3 Vict. ch. 62, §§ 26–33.] By 6 & 7 Will. IV. ch. 90, it is further provided that: "Nothing in this Act contained, unless by special provision to be inserted in some parochial agreement, and specially approved by the commissioners, in case the same shall be valid, shall extend . . . to the



tithes of fish or of fishing, or to any personal tithes other than the tithes of mills, or any mineral tithes, or to any payment instead of tithes arising or growing due within the City of London, or to any permanent rentcharge or other rent or payment in lieu of tithes, calculated according to any rate or proportion in the pound on the rent or value of any houses or lands in any city or town, under any custom or private Act of Parliament, or to any lands or tenements the tithes whereof shall have been already perpetually commuted or extinguished under any Act of Parliament heretofore made."

Tithe-rentcharge is payable half-yearly. If in arrear for twenty-one days, it can be recovered by distress, after ten days' notice; if in arrear for forty days, by a writ to the sheriff, ordering him to summon a jury to assess the amount of rentcharge due, and then by another writ giving possession of the lands to the owner of the rentcharge until payment is made. But no more than two years' arrears can in any case be recovered. [6 & 7 Will. IV. ch. 71, §§ 69, 81, 82.] **Recovery of arrears.**

§ 2. *Glebe Lands.*

The incumbent of a parish is a corporation sole, having a continuous succession, and as such can hold lands for himself and his successors after the manner of a freehold. "By which means," says Blackstone, "all the original rights of the parsonage are preserved entire to the successor: for the present incumbent, and his predecessor



who lived seven centuries ago, are in law one and the same person, and what was given to the one was given to the other also." [Blackst. *Comm.*, Book I. ch. 18.] The tenure of an incumbent is, however, regarded by the law as of the same kind as that of tenants for life; and he is prohibited from alienating the estate, as well as from wasting it by the destruction of anything which is not included in the usufruct or temporary profit.

Glebe a common law right.

No church could be built formerly without land for the support of the priest serving it, which is called, in the canon law, "unus mansus integer," and which used to be held free from all temporal service. [*Extrav.* iii. 39; Egbert's *Excerpts*, 25.] This manse, or glebe, was anciently the endowment of the church, without which it could not be consecrated; and hence all ancient churches have some land attached to them, which is vested in its rector or vicar as a part of the provision for his maintenance.

Acquisition of glebes.

Glebes already existing may, in some cases and to some extent, be enlarged by benefaction or purchase, and glebes for new benefices may also be formed in a similar manner; but the laws relating to their formation and enlargement, and also to the exchange of lands to form more convenient glebes, are so numerous and intricate that it is impossible to review them here.[1]

If glebe-lands be cultivated by the incumbent himself he is not restricted to any particular mode of cultivation;

[1] A very useful summary of them may be found in Hodgson's *Instructions for the Clergy*, pp. 104–138 (Ed. 1870).

nor is he liable to his successor for any neglect or mismanagement. [Bird *v.* Relfe, 4 Barn. & Adolph. 826.] He is, as regards cultivation, the owner, rather than the tenant. It is his duty, however, of course to see that reasonable care be taken to keep the land in profitable order for his successor. He may not, consequently, commit what is legally termed "waste" of any kind. Thus he is expressly prohibited from cutting down trees for sale, and is only allowed to fell them at all for the purpose of repairing the building or fences belonging to the benefice. He is prohibited also from opening mines [Knight *v.* Moseley, Amb. 176], or gravel-pits [Huntley *v.* Russell, 13 Adolph. & Ell. Q.B. 572], on the glebe, though he may work those which are already open; nor may he quarry stone beyond what is necessary for repairs.

Cultivation by the Incumbent.

He cannot fell timber for sale,

or open mines.

Glebe-lands and buildings may be let on lease for farming purposes, under the provisions of 5 & 6 Vict. ch. 27, for fourteen years, or on an improving lease for twenty years. But the parsonage-house, and ten acres of land immediately adjoining it, are to be reserved, or, if there is not so much glebe-land adjoining, then ten acres, or as much as there may be, if less than ten acres, within five miles of the parsonage, or of the church where there is no parsonage. The covenants of such leases are expressly laid down by the Act, and include insurance and repairs.

Glebe may be let on farming lease,

Glebe-lands may also be let on building leases for not more than ninety-nine years, or mining leases for not

more than sixty years, under the provisions of 5 & 6 Vict. ch. 108, and 21 & 22 Vict. ch. 57. Such leases require the consent of the Ecclesiastical Commissioners.

and building leases.

All farm-buildings upon the glebe, together with walls, fences, and such things as the incumbent is, by law or custom, bound to maintain in repair, are the subjects of dilapidations, and come under the operation of the Ecclesiastial Dilapidations Act of 1871 [34 & 35 Vict. ch. 43], which is reviewed in the chapter on PARSONAGE HOUSES.

Repairs under Dilapidations Act.

§ 3. *Perpetual Annuities.*

A new kind of income has been provided for the clergy within the last few years, in the form of perpetual annuities, payable half-yearly by the Ecclesiastical Commissioners out of their common fund; this fund consisting of the surplus income of the episcopate, the cathedral bodies, and certain other large preferments, capitalized.

These annuities are granted in augmentation of benefactions from trustees, societies, or individual persons. The benefaction may consist of money, land, house, site of a house, tithe, or rentcharge. In the case of money, every 100*l.* placed in the hands of the commissioners for the benefit of a benefice yields interest to the benefice at the rate of 3*l.* 6*s.* 8*d.* a year, and to this is added a perpetual annuity of the same amount. Thus, every 100*l.* benefaction to the benefice secures to the incumbent an

Benefactions paid to Ecclesiastical Commissioners

annuity of 6*l.* 13*s.* 4*d.* Where the benefaction is given in another form, the perpetual annuity granted to meet it will amount to one-thirtieth of its value, all grants being estimated at thirty years' purchase.

met by perpetual annuities of equal value.

§ 4. *Fees, Dues, and Offerings.*

Besides the more regular income of the parochial clergy from tithes and glebe, or from funds in the hands of the Ecclesiastical Commissioners, there are certain casual sources of income, which yet are, in some cases, of considerable importance to the clergy.

These may be divided into (1) surplice fees, (2) other fees, (3) dues and offerings.

[1.] Surplice fees are those on performing the offices of the Church for the benefit of individuals—that is, fees on marriages, churchings, and burials.

Fees on marriages have been treated of under the chapter on HOLY MATRIMONY [see p. 155].

Fees on churchings are due, according to the rubric at the end of that service, which is as follows:—"The woman that cometh to give her thanks must offer her accustomed offerings."

Fees on burials are not due of common right, but they may be due of custom. Sir Simon Degge says the usual fee to the clergyman is 3*s.* 4*d.* for breaking the soil in the churchyard. [Sir R. Phillimore, *Eccl. Law*, p. 862.]

It should be always remembered that all these fees are governed by the general law of the Church, as laid down in the Constitution of Archbishop Langton [Lyndwood,

p. 278], which is as follows:—"We do firmly enjoin that no sacrament of the Church shall be denied to any one upon the account of any sum of money, nor shall matrimony be hindered therefor; because if anything hath been accustomed to be given by the pious devotion of the faithful, we will that justice be done thereupon to the churches by the ordinary of the place afterwards."

It is the duty, therefore, of the clergyman, first to perform the office, and then, if need be, to demand his fee.

By 59 Geo. III. ch. 134, § 11: "It shall be lawful for the commissioners" (that is, the Ecclesiastical Commissioners), "and they are hereby empowered, to make and fix any table of fees for any parish, with the consent of the vestry or select vestry, or persons exercising the powers of vestry in such parish, and also to make and fix any such table of fees for any extra-parochial place, or in or for any district, chapelry, or parochial chapelry in which any church or chapel shall be built or appropriated, under the provisions of the above-recited Act or this Act, with the consent, nevertheless, in all such cases of the bishop of the diocese; and all fees so fixed may be demanded, received, sued for, prosecuted, and recovered, by the spiritual person, or clerk, or sexton, to whom the same shall be assigned, in like manner, and by such and the same means, as any ancient legal fees of a like nature may be sued for, prosecuted, and recovered."

[2.] Other fees are such, for instance, as may be due by custom to the rector or vicar, for allowing the erection of a tablet, or other form of monument, in the church or chancel [Rich *v.* Bushnell, 4 Hagg. Rep. 164]; and such



as are due in all cases to the rector or vicar for allowing the erection of any stone or brick monument over a grave in the churchyard. Fees are also due to the incumbent for making searches in or extracts from the Parochial Registers of Baptisms, Marriages, and Burials. These fees are expressly saved by 52 Geo. III. ch. 146, § 16, and 6 & 7 Will. IV. ch. 86, § 49.

[3.] Dues and offerings are of two kinds—Easter dues or offerings, and mortuaries. As to Easter dues, one of the rubrics at the end of the Communion Service provides thus:—"And yearly at Easter every parishioner shall reckon with the parson, vicar, or curate, or his or their deputy or deputies; and pay to them or him all ecclesiastical duties, accustomably due, then and at that time to be paid."

The distinction between dues and offerings is not very precise, and the two words are often interchanged. It seems, however, that, strictly speaking, offerings are gifts made at Easter in excess of the amount legally due.

In the case of Carthew *v.* Edwards [Ambler, 72], it was decreed by the Court of Exchequer that Easter offerings were due of common right. The usual offering is at the rate of twopence per head for every person in the house of sixteen years of age and upwards; but by custom it may be more. [Sir R. Phillimore, *Eccl. Law*, p. 1547.] They were said by Lord Chief Baron Gilbert to be a compensation for personal tithes. [Egerton *v.* Still, Bunbury, 198.]

It seems that by custom, also, offerings may be due at Christmas, Whitsuntide, and the Feast of the Dedication

of the Church. [2 & 3 Edw. VI. ch. 13, § 10; Gibson's *Codex*, p. 739.]

[4.] Mortuaries, or corse-presents, are due, by custom only, in certain places for every householder that dies, whether within or away from his parish. By 21 Hen. VIII. ch. 6, § 2, they are limited in amount thus:—No mortuary where the person died not worth 10 marks in moveable goods; from 10 marks to 30*l.*, 3*s.* 4*d.*; from 30*l.* to 40*l.*, 6*s.* 8*d.*; exceeding 40*l.*, 10*s.* This last is the highest sum fixed.

By § 5, no mortuaries shall be taken in Wales, or within the town of Berwick-on-Tweed.

By 2 & 3 Vict. ch. 62, § 9, it is enacted that, "it shall be lawful, at any time before the confirmation of any apportionment after a compulsory award in any parish, for the landowners and titheowners, having such interest in the lands and tithes of such parish as is required for the making of a parochial agreement, to enter into a parochial agreement for the commutation of Easter offerings, mortuaries, or surplice fees."

Chapter II.

PARSONAGE HOUSES.

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AS to Parsonage Houses, the 25th of the Excerpts of Egbert [A.D. 740] reproducing the still older precept of the canon law, has been already mentioned. It runs thus: "Let one entire manse [*unus mansus integer*] be given to every church for the tithes, oblations of the faithful, houses, churchyards, gardens near the church; and for the manse before mentioned, let the priests appointed to them do no other service than ecclesiastical." [Gibs. *Cod.* xxx. 2.] During the prevalence of the monastic system, however, a large proportion of parishes were served by clergy who were also monks, and, living in the monasteries, did not require to use the glebe-houses, which were probably let. Such old glebe-houses as have lasted to modern times were also very small, and unsuited for modern habits, and were neglected by the incumbents. Hence the great deficiency of parsonage-

Common law right of clergy to residences.

houses until within the last eighty or a hundred years, and the new necessity which has arisen for legislation respecting them.

§ 1. *The Acquisition of Parsonage Houses.*

Statutory legislation respecting them.

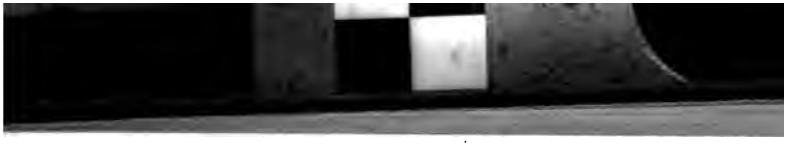
Many facilities have, however, been provided during the last century, for securing suitable residences to the parochial clergy; the want of them being stated, in the preamble to the Gilbert Act of 1777, as a reason why many of the clergy resided "at a distance from their benefices, by which means the parishioners lose the advantage of their instruction and hospitality, which were great objects in the original distribution of tithes and glebes for the endowment of churches."

Building loans mortgage.

By the Act quoted, it is provided that any incumbent may (with the consent of the ordinary and patron) borrow at interest any sum not exceeding two years' net income of his benefice, mortgaging the glebe, tithes, rents, and other profits of the living for twenty-five years, or until the debt and interest is paid off. [17 Geo. III. ch. 53, § 1.] This Act has been extended by 1 & 2 Vict. ch. 23, § 1,[1] so that the incumbent may borrow three years' income, mortgaging for thirty-five years, and repaying a thirtieth part of the loan every year after the first, with the interest. By the 12th section of the first Act, and the 4th of the Act extending its operation, the Governors of Queen Anne's Bounty are empowered

By Queen Anne's Bounty.

[1] See also 1 & 2 Vict. ch. 106; 28 & 29 Vict. ch. 69.



to lend the money at 4 per cent. interest, or 100*l.* without interest where the benefice is below 50*l.* a year; and by the 13th section of the former and the 5th of the latter Act, it is also provided that colleges and other corporate bodies may lend the money without interest to benefices in their patronage.

By colleges, &c.

An Act was passed in 1802, by which the Governors of Queen Anne's Bounty are enabled to apply any money coming into their hands for the augmentation of a benefice, "in or towards the building, rebuilding, or purchasing of a house, and other proper erections within the parish, convenient and suitable for the residence of the minister thereof." [43 Geo. III. ch. 107, § 3.] By a later Act, corporations and persons under disability, or not having the full ownership in lands, are empowered to convey lands and houses for making residence houses for the parochial clergy—such lands and houses to be "conveyed unto and to the use of the parson, vicar, or other incumbent," without any damage from the Statute of Mortmain. [7 Geo. IV. ch. 66, § 1.]

Queen Anne's Bounty augmentations applied to building purposes.

The Ecclesiastical Commissioners are also enabled to apply to the same purpose any capital sum, not exceeding 1500*l.*, to meet a private benefaction of the same amount. [Regulations, Mar. 1869, II. 2, 3, 8.]

The same by Ecclesiastical Commissioners.

A further means of obtaining funds is also provided by 2 & 3 Vict. ch. 49, §§ 17, 18, & 19, which empowers the incumbent (with the consent of the patron, ordinary, and archbishop) to sell "any dwelling-house, shop, warehouse,

or other erection or building (other than the house of residence[1]) belonging" to his benefice, provided it "shall be so old and ruinous as that it would be useless or inexpedient to expend money in repairing and maintaining the same," or if "for other good and sufficient reasons it shall be thought advisable to sell and dispose of the same." The proceeds of such sale are to be paid over to the Governors of Queen Anne's Bounty, to form a fund for the augmentation of the benefice from which it has been obtained; and part or the whole of such fund may [by 43 Geo. III. ch. 107, § 3] be used for building, rebuilding, or purchasing a parsonage-house. Capital sums in lieu of tithe commutation rentcharges, not exceeding 200*l.*, may also be sold and appropriated in the same way. [9 & 10 Vict. ch. 73, § 8.]

Old houses, &c. may be sold and the money used for building.

If a parsonage-house is inconveniently situated, it may also be sold, and the proceeds of the sale dealt with in precisely the same manner. [1 & 2 Vict. ch. 23, §§ 7, 8, & 9.] In this case any land contiguous to the house may also be sold, provided the quantity does not exceed twelve acres. [1 & 2 Vict. ch. 29.] Some advantage may likewise be derived from the 6th clause of the same Act, which enables the incumbent to convert a parsonage that is not suitable for his residence into a farmhouse or farm-buildings for the tenant of the glebe.

Inconveniently situated parsonages may be sold.

Old and unsuitable parsonages may be turned into farm buildings.

Lastly, when a benefice exceeding 100*l.* in annual value

[1] The house of residence may be sold or exchanged with the same consent, by virtue of 1 & 2 Vict. ch. 23.

becomes vacant, the bishop is empowered to compel the incoming incumbent to build a parsonage, by borrowing the necessary funds on the security of a mortgage of the benefice for thirty-five years. [1 & 2 Vict. ch. 106, §§ 62, 63.]

There are several acts enabling persons having only limited interests in their estates to give or sell land on which to build parsonage houses. The last and probably most complete is 36 & 37 Vict. ch. 80.

§ 2. *Repairs during Incumbency.*

The incumbent is bound to keep the parsonage-house in good repair during his incumbency, since he holds it not only for his own advantage, but in trust for his successors. The rights and duties of incumbents as regarded such repairs were formerly very difficult to learn, and the operation of the law as regarded them was very uncertain; but an attempt to provide a complete code of this law has been made by "The Dilapidations Act, 1871." This Act has simplified the law on the subject, and will, with modifications learned by experience of its working, be of advantage to all persons concerned.

By this Act [34 & 35 Vict. ch. 43], the following provisions are made for the repairs of parsonages during the incumbency of the rector or vicar to whose benefice they belong—the same provisions extending also to chancels, and to all other buildings belonging to a benefice:[1]—

[1] By the 4th section of the Act, its provisions "apply to all such houses of residence, chancels, walls, fences, and other buildings and things, as the incumbent of the benefice is by law or custom bound to maintain in repair."

[1.] A diocesan surveyor is to be appointed by the archdeacons and rural deans.

[2.] (*a*) Any incumbent may make a request, in writing, to the bishop of the diocese, for an inspection of his buildings; and the bishop may then direct the diocesan surveyor to inspect them, and to make a report thereon.

Notice to be given by incumbent that repairs are necessary.

Or, (*b*) a complaint, in writing, may be made by the archdeacon, the rural dean, or the patron of the benefice, asking for an inspection of the buildings. In this case a copy of the complaint must be sent to the incumbent, by the bishop, one month before such inspection shall be ordered. Should the incumbent then, within twenty-one days after receiving this copy of the complaint, inform the bishop in writing that he intends forthwith to put his buildings in proper repair, the bishop is to give him a reasonable time for doing so. But while the repairs are in progress, and after their completion, the bishop may direct the diocesan surveyor to inspect and report thereon; and if he shall report that they are insufficient, and that further repairs are necessary, then the Act is to be put in force, in like manner as if the incumbent had not given notice that he intended himself to do the repairs.

Archdeacon, rural dean, or patron.

But incumbent may take repairs into his own hands,

at his own risk.

[3.] The diocesan surveyor is to make his inspection as soon as conveniently may be after the bishop has directed it to be made; and within one month after the survey, he is to send his report to the bishop, sending also a copy to the incumbent stating:—

Surveyor's report.



1. What works are needed, specifying the same in detail.
2. What he estimates to be the probable cost of such works.
3. At or within what time or times such works respectively ought to be executed.

[4.] The incumbent may, within one month after the sending of the said copy, state in writing to the bishop his objections to the report on any grounds of fact or law. The bishop may then, if he shall think fit, direct a second report to be made by another surveyor as to matters of fact, or take counsel's opinion as to matters of law, giving his final decision in writing. The expenses of this second survey, or of counsel's opinion, are to be made at the expense of the person objecting.

Incumbent's objections.

If no objections have been made within a month of the report being made, it shall be final; if objections have been made within that time, then the report as modified by the bishop's decision shall be final. The surveyor's report, when finally settled, is regarded by the Act as the authoritative order under which the repairs are to be executed; and the incumbent is required to execute the repairs prescribed within the time prescribed, or within such extended time as the bishop may appoint in writing under his hand.

Final report.

It is, however, open to the incumbent, under the 50th section of the Act, to substitute other works, by way of alteration, remodelling, or rebuilding, for the repairs ordered by the surveyor,

Substitution of other works for those ordered.

provided they are done with the consent of the bishop and the patron, and to the satisfaction of the surveyor.

[5.] To raise money from the benefice for such repairs as shall be ordered, the incumbent may borrow from the Governors of Queen Anne's Bounty (with the consent of the bishop and patron), upon the security of the possessions of the benefice—

1. The whole or any part of the sum stated in the final report as the cost of the works;
2. Such sum as the governors shall think fit in respect of costs and expenses;

the costs and expenses incidental to the preparation and completion of the security being deducted by them from the funds so placed to the credit of the benefice.

[6.] If the incumbent shall refuse or neglect to execute the prescribed repairs within the prescribed time, the bishop may raise the necessary funds by sequestrating the benefice, the profits being paid to the Governors of Queen Anne's Bounty under special provisions contained in the 20th and 21st sections of the Act.

But if, after the incumbent has paid to the governors the sum specified in the surveyor's report, he should wish to postpone the repairs for a limited period, such postponement may take place upon the surveyor certifying that he may safely do so, and upon the incumbent paying such further sum to his dilapidation account with the governors as may be proper to meet any probable further dilapidations that may ensue through the delay of the repairs.

[7.] When the repairs have been completed to the

satisfaction of the surveyor, he is to give a certificate to the incumbent (duplicates of which will be lodged with the registrar of the diocese and the Governors of Queen Anne's Bounty), declaring that they have been properly completed. This certificate shall be conclusive evidence of the due execution of the prescribed works; will exempt the incumbent from any liability to a further survey or report for five years; and if he should vacate the benefice during those five years, will exempt him and his representatives from any claim for dilapidations, except for wilful waste.

But to secure himself against such liability in case of fire during the five years, the incumbent must have insured his house, chancel, and other buildings, in at least three-fifths of their value, before the certificate is filed, and must continue the insurance. **Insurance of buildings**

[8.] The incumbent or his representatives will be liable for the cost of all the repairs ordered until the surveyor's certificate of completion is given, or for any repairs liable to be ordered under a survey then pending; and the incoming incumbent may recover the money as a debt. [See §§ 24 & 49.] There are special provisions as to surveys and repairs when the benefice is already under sequestration.

§ 3. *Insurance.*

Very strict provisions respecting fire insurance are also made by the 54th, 55th, 56th, and 57th sections of "The Ecclesiastical Dilapidations Act, 1871."

[1.] The incumbent of every benefice is required to insure, and keep insured, all the buildings for the repair of which he is liable, in some office satisfactory to the Governors of Queen Anne's Bounty, in at least three-fifths of the value of the buildings. The receipt for each premium is to be exhibited at the first visitation of the bishop or archdeacon next ensuing after the same shall become payable.

[2.] In case any building is destroyed by fire, and the insurance office elect to pay the sum insured instead of reinstating the building, the money is to be paid to the Governors of the Bounty, and treated as a dilapidation account.

[3.] Should the diocesan surveyor certify to the bishop that the amount for which the incumbent had insured any of his buildings which have been destroyed by fire is not sufficient to reinstate them, the bishop is to set in motion the same process as is provided in the case of dilapidations; and if the money which is necessary over and above the insurance-money is not otherwise paid by the incumbent, it is to be obtained by the sequestration of his benefice.

§ 4. *Liabilities of Outgoing and Incoming Incumbents.*

General liabilities of outgoing incumbents.

It is the theory of the law that the parsonage-house, and all other buildings of a benefice for the repair of which the incumbent of the benefice is liable, shall be handed over from one incumbent to another in a state of substantial repair, or with sufficient money to restore them to such

a state; and in the case of a deceased incumbent, this liability extends to his representatives.

"The Ecclesiastical Dilapidations Act, 1871," has, however, provided that every incumbent who holds a certificate of the diocesan surveyor, the five years' validity of which has not expired, shall be free from any claim for dilapidations, except for wilful waste, or for loss by fire when he has not properly insured. The representatives of a deceased incumbent are in the same position.

But certificated incumbents not liable.

If such a protection does not exist [1], the outgoing incumbent, or the representatives of a deceased incumbent, are still liable to the incoming incumbent for dilapidations; but by the 53rd section of the Act, no sum is now recoverable for them unless the claim for such sum is founded on the report of a diocesan surveyor.

Nor any liability, except under surveyor's report.

[2.] The inspection necessary for this report is to be ordered by the bishop within three months after the avoidance of the benefice;[1] and copies of the report founded on it are to be sent to the new incumbent, and also to the late incumbent or his representatives.

Report to be ordered within three months.

[3.] Objections may be lodged by either of these within a month; and the bishop may receive such objections at a later period also, if for any special reason he shall think fit to do so.

Persons interested may object.

[1] The widow of a deceased incumbent is entitled to occupy the parsonage-house for any time not exceeding two calendar months after his decease. [1 & 2 Vict. ch. 106, § 36.]

These objections are to be treated in the same way as objections made to the report of the surveyor where a survey is ordered, under the previous provisions, when the benefice is not vacant.

The bishop's order for repairs.

[4.] When the objections, if any, have been disposed of, the bishop is to make an order, stating the repairs and their cost; for which the late incumbent, his executors or administrators, is or are liable. This order is to be signed in triplicate, and the triplicates are to be sent to the new incumbent, the late incumbent, his executors or administrators, and the diocesan registrar, who is to send a copy to the Governors of Queen Anne's Bounty.

Cost of them recoverable as a debt.

[5.] The sum stated in the order as the cost of the repairs is recoverable as a debt from the late incumbent, his executors or administrators, to the new incumbent; and when recovered by him, it is to be paid over to the Governors of Queen Anne's Bounty, to be placed to the credit of his dilapidation account.

New incumbent to pay costs of repairs whether recovered or not,

[6.] The new incumbent is to pay to the governors, within six months from the date of the order, the whole of the sum stated in it as the cost of the repairs, whether or not he has recovered it from his predecessor or his representatives. The bishop may, for good reasons, extend the time to twelve months; but if it is not then paid, it is to be obtained by sequestration of the benefice.

[7.] The new incumbent is to execute the repairs specified in the order within eighteen months from the day on

which it was dated, unless, with the consent of the patron and bishop, he shall decide upon rebuilding the premises in question, in which case the dilapidation-money is to be applied by the governors towards the cost of the new building.

and to execute them within eighteen months.

[8.] The provisions respecting loans from the governors, insurance, and the certificate of indemnity for five years to be given by the surveyor on the completion of the repairs, are the same as those already stated in the section relating to repairs during incumbency.

Removal of superfluous buildings and luxuries.

Until the Dilapidations Act of 1871, an outgoing incumbent, or his representatives, became liable for over-building, and might be compelled to pay dilapidations as damages for so doing. But by the 70th section of the present Act, it is enacted that no incumbent who has pulled down buildings shall be liable for dilapidations if he has substituted others of equal or greater value: and by the 71st section, it is provided that such unnecessary parts of any parsonage-house may be removed by written order of the bishop, granted on the request of the incumbent, and with the consent of the patron. The proceeds, if any, of such removal, are to be applied to the improvement of the benefice in any such manner as the bishop and patron may agree on.

It only remains to say that this Act has destroyed the old procedure and much of the other old law with respect to dilapidations.

Chapter III.

THE SEQUESTRATION OF BENEFICES.

A BENEFICED CLERGYMAN is liable to have his ecclesiastical income seized and taken out of his control, if he becomes bankrupt, if a judgment against him for a sum of money cannot be otherwise satisfied, and if he has committed certain ecclesiastical offences. This alienation of his ecclesiastical income is effected by the sequestration of his benefice, so that the profits of it are received and administered by some other person than himself, that person being appointed sequestrator for the purpose by the bishop. This process is founded upon the principle of the common law, that ecclesiastical incomes are to be dealt with by ecclesiastical persons, and are not subject to the ordinary processes of secular law.

The nature of sequestration.

When judgment for a sum of money is recovered against a clergyman, and it is found that he has no means of paying the judgment-debt otherwise than from his ecclesiastical income, a writ of *Fieri facias de bonis ecclesiasticis* is issued to the bishop, and served on the registrar of the diocese. This writ

For debt.



commands the bishop, in the Queen's name, to raise the judgment-debt out of the living: and on receiving it the bishop will, through his registrar, issue an instrument of sequestration, addressed to the churchwardens, or to the bishop's secretary or registrar, or to the judgment-creditor on his finding security, giving to them or him full authority to collect, levy, gather, and receive all the emoluments of the sequestered benefice, and to apply the same to the payment of the judgment-debt. This instrument of sequestration is published by being affixed to the church-door, and operates from the time of publication. The sequestrator then takes the place of the incumbent, so far as the incomings are concerned, and so far, also, as regards all outgoings—such as stipend of curate, repair of dilapidations, &c.—for which the incumbent is, by custom or law, liable.

In bankruptcy.

In case of the incumbent's bankruptcy, application for a sequestration may be made by the trustee in bankruptcy to the bishop, when it is issued in a similar manner—this being the only means by which the trustee can touch the bankrupt's ecclesiastical income.

The bishop to appoint curates after six months' sequestration.

When a sequestration issued in either of these cases remains in force for six months, the bishop of the diocese is required, by the Sequestration Act of 1871—from and after the expiration of the six months, and as long as the sequestration shall continue—to take order for the due performance of the services of the church of the benefice; and he is to appoint for that purpose such curate

or curates, or additional curate or curates, as the case may require. The stipends of such curates are regulated by the Act [see page 219], and are to be paid by the sequestrator before any sums payable by virtue of the judgment or the bankruptcy, but not before liabilities in respect of charges on the benefice. [34 & 35 Vict. ch. 45, §§ 1, 3.]

The sequestrator to pay them before any debts, &c.

If it appears, after the sequestration has continued in force for more than six months, that scandal or inconvenience is likely to arise from the incumbent continuing to perform the services of the Church, the bishop may inhibit him from taking any duty in the diocese so long as the sequestration lasts, but may at any time withdraw the inhibition. In no case can an incumbent present any other person to a benefice of which he is patron in right of his own benefice, while his own is under sequestration; nor can he himself accept the institution to any benefice or preferment which would vacate that under sequestration, without the consent of the bishop and the sequestrator. [34 & 35 Vict. ch. 45, §§ 5, 6, 7.]

Incumbent to be inhibited if scandal arises,

and cannot present or be presented to another benefice.

Benefices may also be sequestered, after notice given, for non-compliance with an order of the bishop to the incumbent requiring him to reside; and if such sequestration continues for a year, or two sequestrations are issued in one year, the benefice becomes vacant. [1 & 2 Vict. ch. 106, §§ 54, 58.]

Sequestration for non-residence.

By the 83rd section of the last-cited Act, a benefice



may also be sequestered for nonpayment of the stipend of the curate duly licensed for the parish. By "The Ecclesiastical Dilapidations Act, 1871," incumbents are liable to the same penalty if they refuse or neglect to comply with the provisions of the Act. [34 & 35 Vict. ch. 43, §§ 23, 43, 57.]

Whenever an ecclesiastical court issues a sentence of suspension against a beneficed clergyman it provides, by sequestration, for the due collection of the profits of the living, and for the religious care of the parish, during the time of the suspension.

Sequestration may likewise accompany any inhibition for disobedience to a monition under the Public Worship Regulation Act, 1874. [See page 492.]

APPENDIX.

I.

THE CANONS OF A.D. 1603, AS REVISED IN A.D. 1865.

CONSTITUTIONS and CANONS ECCLESIASTICAL, treated upon by the Bishop of London, President of the Convocation for the Province of Canterbury, and the rest of the Bishops and Clergy of the said Province; and agreed upon with the King's Majesty's Licence, in their Synod begun at London, Anno Domini 1603,[1] and in the Year of the Reign of our Sovereign Lord JAMES, by the Grace of God, King of England, France, and Ireland, the first, and of Scotland the thirty-seventh: and now published, for the due observation of them, by his Majesty's authority, under the Great Seal of England.

JAMES, by the grace of God, King of England, Scotland, France, and Ireland, Defender of the Faith, &c., to all to whom these presents shall come, greeting: Whereas our bishops, deans of our cathedral churches, archdeacons, chapters, and colleges, and the other clergy of every diocese within the province of Canterbury, being summoned and called by virtue of our writ directed to the Most Reverend Father in God John, late Archbishop of Canterbury, and bearing date the one-and-thirtieth day of January, in the first year of our reign of England, France, and Ireland, and of Scotland the thirty-seventh, to have appeared before him in our cathedral church of St. Paul in London, the twentieth day of March then next ensuing, or elsewhere, as he should have thought it most

[1] In the year 1865 new Canons were framed in the place of the 36th, 37th, 38th, and 40th, by the Convocations of Canterbury and York under licence from the Crown. These were subsequently promulgated by the Crown in the form in which they are here printed.

convenient, to treat, consent, and conclude upon certain difficult and urgent affairs mentioned in the said writ; did thereupon, at the time appointed, and within the cathedral church of St. Paul aforesaid, assemble themselves, and appear in Convocation for that purpose, according to our said writ, before the Right Reverend Father in God Richard, Bishop of London, duly (upon a second writ of ours, dated the ninth day of March aforesaid) authorized, appointed, and constituted, by reason of the said Archbishop of Canterbury his death, President of the said Convocation, to execute those things which, by virtue of our first writ, did appertain to him the said archbishop to have executed, if he had lived: We, for divers urgent and weighty causes and considerations us thereunto especially moving, of our especial grace, certain knowledge, and mere motion, did, by virtue of our prerogative royal and supreme authority in causes ecclesiastical, give and grant by our several letters-patent under our Great Seal of England, the one dated the twelfth day of April last past, and the other the twenty-fifth day of June then next following, full, free, and lawful liberty, licence, power, and authority unto the said Bishop of London, President of the said Convocation, and to the other bishops, deans, archdeacons, chapters, and colleges, and the rest of the clergy before mentioned, of the said province, that they, from time to time, during our first Parliament now prorogued, might confer, treat, debate, consider, consult, and agree of and upon such canons, orders, ordinances, and constitutions, as they should think necessary, fit, and convenient, for the honour and service of Almighty God, the good and quiet of the Church, and the better government thereof, to be from time to time observed, performed, fulfilled, and kept, as well by the Archbishops of Canterbury, the bishops, and their successors, and the rest of the whole clergy of the said province of Canterbury, in their several callings, offices, functions, ministries, degrees, and administrations; as also by all and every Dean of the Arches, and other judge of the said Archbishop's Courts, guardians of spiritualities, chancellors, deans and chapters, archdeacons, commissaries, officials, registrars, and all and every other ecclesiastical officers, and their inferior ministers, whatsoever, of the same province of Canterbury, in their and every of their distinct courts, and in the order and manner of their and every of their proceedings; and by all other persons within this realm, as far as lawfully, being members of the Church, it may concern them, as in our said letters-patent amongst other clauses more at large doth appear. Forasmuch

as the Bishop of London, President of the said Convocation, and others, the said bishops, deans, archdeacons, chapters, and, colleges, with the rest of the clergy, having met together, at the time and place before mentioned, and then and there, by virtue of our said authority granted unto them, treated of, concluded, and agreed upon certain canons, orders, ordinances, and constitutions, to the end and purpose by us limited and prescribed unto them; and have thereupon offered and presented the same unto us, most humbly desiring us to give our royal assent unto their said canons, orders, ordinances, and constitutions, according to the form of a certain Statute or Act of Parliament made in that behalf in the twenty-fifth year of the reign of King Henry the Eighth, and by our said prerogative royal and supreme authority in causes ecclesiastical, to ratify by our letters-patent under our Great Seal of England, and to confirm the same, the title and tenor of them being word for word as ensueth:

OF THE CHURCH OF ENGLAND.

1. *The King's Supremacy over the Church of England in Causes Ecclesiastical to be maintained.*

As our duty to the King's most excellent Majesty requireth, we first decree and ordain, that the Archbishop of Canterbury (from time to time), all bishops of this province, all deans, archdeacons, parsons, vicars, and all other ecclesiastical persons, shall faithfully keep and observe, and (as much as in them lieth) shall cause to be observed and kept of others, all and singular laws and statutes, made for restoring to the Crown of this kingdom the ancient jurisdiction over the State Ecclesiastical, and abolishing of all foreign power repugnant to the same. Furthermore, all ecclesiastical persons having cure of souls, and all other preachers, and readers of divinity lectures, shall, to the uttermost of their wit, knowledge, and learning, purely and sincerely, without any colour or dissimulation, teach, manifest, open, and declare, four times every year at least, in their sermons and other collations and lectures, that all usurped and foreign power (forasmuch as the same hath no establishment nor ground by the law of God) is for most just causes taken away and abolished: and that therefore no manner of obedience, or subjection, within his Majesty's realms and dominions, is due unto any such foreign power, but that the King's

power, within his realms of England, Scotland, and Ireland, and all other his dominions and countries, is the highest power under God; to whom all men, as well inhabitants as born within the same, do by God's laws owe most loyalty and obedience, afore and above all other powers and potentates in the earth.

2. *Impugners of the King's Supremacy censured.*

Whosoever shall hereafter affirm, that the King's Majesty hath not the same authority in causes ecclesiastical, that the godly kings had amongst the Jews and Christian emperors of the Primitive Church; or impeach any part of his regal supremacy in the said causes restored to the crown, and by the laws of this realm therein established; let him be excommunicated *ipso facto*, and not restored, but only by the archbishop, after his repentance, and public revocation of those his wicked errors.

3. *The Church of England a true and apostolical Church.*

Whosoever shall hereafter affirm, that the Church of England, by law established under the King's Majesty, is not a true and apostolical Church, teaching and maintaining the doctrine of the Apostles; let him be excommunicated *ipso facto*, and not restored, but only by the archbishop, after his repentance, and public revocation of this his wicked error.

4. *Impugners of the Public Worship of God established in the Church of England censured.*

Whosoever shall hereafter affirm, that the form of God's worship in the Church of England, established by law, and contained in the Book of Common Prayer and Administration of Sacraments, is a corrupt, superstitious, or unlawful worship of God, or containeth anything in it that is repugnant to the Scriptures; let him be excommunicated *ipso facto*, and not restored, but by the bishop of the place, or archbishop, after his repentance, and public revocation of such his wicked errors.

5. *Impugners of the Articles of Religion established in the Church of England censured.*

Whosoever shall hereafter affirm, that any of the Nine-and-thirty Articles agreed upon by the archbishops and bishops of both

provinces, and the whole clergy, in the convocation holden at London in the year of Our Lord God one thousand five hundred sixty-two, for avoiding diversities of opinions, and for the establishing of consent touching true religion, are in any part superstitious or erroneous, or such as he may not with a good conscience subscribe unto; let him be excommunicated *ipso facto*, and not restored, but only by the archbishop, after his repentance, and public revocation of such his wicked errors.

6. *Impugners of the Rites and Ceremonies established in the Church of England censured.*

Whosoever shall hereafter affirm, that the rites and ceremonies of the Church of England by law established are wicked, antichristian, or superstitious, or such as, being commanded by lawful authority, men, who are zealously and godly affected, may not with any good conscience approve them, use them, or, as occasion requireth, subscribe unto them; let him be excommunicated *ipso facto*, and not restored until he repent, and publicly revoke such his wicked errors.

7. *Impugners of the Government of the Church of England by Archbishops, Bishops, &c. censured.*

Whosoever shall hereafter affirm, that the government of the Church of England under his Majesty, by archbishops, bishops, deans, archdeacons, and the rest that bear office in the same, is antichristian, and repugnant to the Word of God; let him be excommunicated *ipso facto*, and so continue until he repent, and publicly revoke such his wicked errors.

8. *Impugners of the Form of Consecrating and Ordering Archbishops, Bishops, &c. in the Church of England censured.*

Whosoever shall hereafter affirm or teach, that the Form and Manner of Making and Consecrating Bishops, Priests, and Deacons, containeth anything in it that is repugnant to the Word of God, or that they who are made bishops, priests, or deacons, in that form, are not lawfully made, nor ought to be accounted, either by themselves or others, to be truly either bishops, priests, or deacons, until they have some other calling to those divine offices; let him be excommunicated *ipso facto*, not to be restored until he repent, and publicly revoke such his wicked errors.



9. *Authors of Schism in the Church of England censured.*

Whosoever shall hereafter separate themselves from the Communion of Saints, as it is approved by the Apostles' rules, in the Church of England, and combine themselves together in a new brotherhood, accounting the Christians who are conformable to the doctrine, government, rites, and ceremonies of the Church of England to be profane, and unmeet for them to join with in Christian profession; let them be excommunicated *ipso facto*, and not restored but by the archbishop, after their repentance, and public revocation of such their wicked errors.

10. *Maintainers of Schismatics in the Church of England censured.*

Whosoever shall hereafter affirm, that such ministers as refuse to subscribe to the form and manner of God's worship in the Church of England, prescribed in the Communion Book, and their adherents, may truly take unto them the name of another Church not established by law, and dare presume to publish it, that this their pretended Church hath of long time groaned under the burden of certain grievances imposed upon it, and upon the members thereof before mentioned, by the Church of England, and the orders and constitutions therein by law established; let them be excommunicated, and not restored until they repent, and publicly revoke such their wicked errors.

11. *Maintainers of Conventicles censured.*

Whosoever shall hereafter affirm or maintain, that there are within this realm other meetings, assemblies, or congregations of the king's born subjects, than such as by the laws of this land are held and allowed, which may rightly challenge to themselves the name of true and lawful churches; let him be excommunicated, and not restored, but by the archbishop, after his repentance, and public revocation of such his wicked errors.

12. *Maintainers of Constitutions made in Conventicles censured.*

Whosoever shall hereafter affirm, that it is lawful for any sort of ministers and lay persons, or of either of them, to join together, and make rules, orders, or constitutions, in causes ecclesiastical, without the king's authority, and shall submit themselves to be



ruled and governed by them; let them be excommunicated *ipso facto*, and not be restored until they repent, and publicly revoke those their wicked and Anabaptistical errors.

OF DIVINE SERVICE, AND ADMINISTRATION OF THE SACRAMENTS.

13. *Due Celebration of Sundays and Holydays.*

All manner of persons within the Church of England shall from henceforth celebrate and keep the Lord's Day, commonly called Sunday, and other holydays, according to God's holy will and pleasure, and the orders of the Church of England prescribed in that behalf: that is, in hearing the Word of God read and taught; in private and public prayers; in acknowledging their offences to God, and amendment of the same; in reconciling themselves charitably to their neighbours, where displeasure hath been; in oftentimes receiving the Communion of the Body and Blood of Christ; in visiting of the poor and sick; using all godly and sober conversation.

14. *The prescript Form of Divine Service to be used on Sundays and Holydays.*

The Common Prayer shall be said or sung distinctly and reverently upon such days as are appointed to be kept holy by the Book of Common Prayer, and their eves, and at convenient and usual times of those days, and in such place of every church as the bishop of the diocese, or ecclesiastical ordinary of the place, shall think meet for the largeness or straitness of the same, so as the people may be most edified. All ministers likewise shall observe the orders, rites, and ceremonies prescribed in the Book of Common Prayer, as well in reading the Holy Scriptures, and saying of prayers, as in administration of the sacraments, without either diminishing in regard of preaching, or in any other respect, or adding anything in the matter or form thereof.

15. *The Litany to be read on Wednesdays and Fridays.*

The Litany shall be said or sung when, and as it is set down in the Book of Common Prayer, by the parsons, vicars, ministers, or

curates, in all cathedral, collegiate, parish churches and chapels, in some convenient place, according to the discretion of the bishop of the diocese, or ecclesiastical ordinary of the place. And that we may speak more particularly, upon Wednesdays and Fridays weekly, though they be not holydays, the minister, at the accustomed hours of service, shall resort to the church or chapel, and, warning being given to the people by tolling of a bell, shall say the Litany prescribed in the Book of Common Prayer: whereunto we wish every householder dwelling within half a mile of the church to come, or send one at the least of his household, fit to join with the minister in prayers.

16. *Colleges to use the prescript Form of Divine Service.*

In the whole Divine Service, and administration of the Holy Communion, in all colleges and halls in both universities, the order, form, and ceremonies shall be duly observed, as they are set down and prescribed in the Book of Common Prayer, without any omission or alteration.

17. *Students in Colleges to wear Surplices in time of Divine Service.*

All masters and fellows of colleges or halls, and all the scholars and students in either of the universities, shall, in their churches and chapels, upon all Sundays, holydays, and their eves, at the time of Divine Service, wear surplices, according to the order of the Church of England: and such as are graduates shall agreeably wear with their surplices such hoods as do severally appertain unto their degrees.

18. *A Reverence and Attention to be used within the Church in time of Divine Service.*

In the time of Divine Service, and of every part thereof, all due reverence is to be used; for it is according to the Apostle's rule, *Let all things be done decently, and according to order*; answerably to which decency and order, we judge these our directions following: No man shall cover his head in the church or chapel in the time of Divine Service, except he have some infirmity; in which case let him wear a night-cap or coif. All manner of persons then present shall reverently kneel upon their knees, when the General

Confession, Litany, and other prayers are read; and shall stand up at the saying of the Belief, according to the rules in that behalf prescribed in the Book of Common Prayer: and likewise when in time of Divine Service the Lord Jesus shall be mentioned, due and lowly reverence shall be done by all persons present, as it hath been accustomed; testifying by these outward ceremonies and gestures, their inward humility, Christian resolution, and due acknowledgment that the Lord Jesus Christ, the true eternal Son of God, is the only Saviour of the world, in whom alone all the mercies, graces, and promises of God to mankind, for this life and the life to come, are fully and wholly comprised. None, either man, woman, or child, of what calling soever, shall be otherwise at such times busied in the church, than in quiet attendance to hear, mark, and understand that which is read, preached, or ministered; saying in their due places, audibly with the minister, the Confession, the Lord's Prayer, and the Creed; and making such other answers to the public prayers, as are appointed in the Book of Common Prayer: neither shall they disturb the service or sermon, by walking or talking, or any other way; nor depart out of the church during the time of service or sermon, without some urgent or reasonable cause.

19. *Loiterers not to be suffered near the Church in time of Divine Service.*

The churchwardens or questmen, and their assistants, shall not suffer any idle persons to abide, either in the churchyard, or church-porch, during the time of Divine Service, or preaching; but shall cause them either to come in, or to depart.

20. *Bread and Wine to be provided against every Communion.*

The churchwardens of every parish, against the time of every Communion, shall at the charge of the parish, with the advice and direction of the minister, provide a sufficient quantity of fine white bread, and of good and wholesome wine, for the number of communicants that shall from time to time receive there: which wine we require to be brought to the communion-table in a clean and sweet standing pot or stoop of pewter, if not of purer metal.



21. *The Communion to be Thrice a Year received.*

In every parish church and chapel where sacraments are to be administered within this realm, the Holy Communion shall be ministered by the parson, vicar, or minister, so often, and at such times, as every parishioner may communicate at the least thrice in the year (whereof the feast of Easter to be one), according as they are appointed by the Book of Common Prayer: provided, that every minister, as oft as he administereth the Communion, shall first receive that sacrament himself. Furthermore, no bread or wine newly brought shall be used; but first the words of institution shall be rehearsed, when the said bread and wine be present upon the communion-table. Likewise the minister shall deliver both the bread and the wine to every communicant severally.

22. *Warning to be given beforehand for the Communion.*

Whereas every lay person is bound to receive the Holy Communion thrice every year, and many notwithstanding do not receive that sacrament once in a year; we do require every minister to give warning to his parishioners publicly in the church at morning prayer, the Sunday before every time of his administering that holy sacrament, for their better preparation of themselves; which said warning we enjoin the said parishioners to accept and obey, under the penalty and danger of the law.

23. *Students in Colleges to receive the Communion Four Times a Year.*

In all colleges and halls within both the universities, the masters and fellows, such especially as have any pupils, shall be careful that all their said pupils, and the rest that remain amongst them, be well brought up, and throughly instructed in points of religion, and that they do diligently frequent public service and sermons, and receive the Holy Communion; which we ordain to be administered in all such colleges and halls the first or second Sunday of every month, requiring all the said masters, fellows, and scholars, and all the rest of the students, officers, and all other the servants there, so to be ordered, that every one of them shall communicate four times in the year at the least, kneeling reverently and decently upon their knees, according to the order of the Communion Book prescribed in that behalf.



24. *Copes to be worn in Cathedral Churches by those that administer the Communion.*

In all cathedral and collegiate churches, the Holy Communion shall be administered upon principal feast-days, sometimes by the bishop (if he be present), and sometimes by the dean, and at sometimes by a canon or prebendary, the principal minister using a decent cope, and being assisted with the gospeller and epistler agreeably, according to the advertisements published *anno* 7 *Eliz.* The said communion to be administered at such times, and with such limitation, as is specified in the Book of Common Prayer. Provided, that no such limitation, by any construction, shall be allowed of, but that all deans, wardens, masters, or heads of cathedral and collegiate churches, prebendaries, canons, vicars, petty canons, singing men, and all others of the foundation, shall receive the communion four times yearly at the least.

25. *Surplices and Hoods to be worn in Cathedral Churches when there is no Communion.*

In the time of Divine Service and prayers, in all cathedral and collegiate churches, when there is no Communion, it shall be sufficient to wear surplices; saving that all deans, masters, and heads of collegiate churches, canons, and prebendaries, being graduates, shall daily, at the times both of prayer and preaching, wear with their surplices such hoods as are agreeable to their degrees.

26. *Notorious Offenders not to be admitted to the Communion.*

No minister shall in anywise admit to the receiving of the Holy Communion any of his cure or flock which be openly known to live in sin notorious, without repentance; nor any who have maliciously and openly contended with their neighbours, until they shall be reconciled; nor any churchwardens or sidemen, who, having taken their oaths to present to their ordinaries all such public offences as they are particularly charged to inquire of in their several parishes, shall (notwithstanding their said oaths, and that their faithful discharging of them is the chief means whereby public sins and offences may be reformed and punished) wittingly and willingly, desperately and irreligiously, incur the horrible crime of perjury, either in neglecting or in refusing to present such of the said enormities and public offences, as they know themselves to be

committed in their said parishes, or are notoriously offensive to the congregation there; although they be urged by some of their neighbours, or by their minister, or by their ordinary himself, to discharge their consciences by presenting of them, and not to incur so desperately the said horrible sin of perjury.

27. *Schismatics not to be admitted to the Communion.*

No minister, when he celebrateth the Communion, shall wittingly administer the same to any but to such as kneel, under pain of suspension, nor under the like pain to any that refuse to be present at public prayers, according to the orders of the Church of England; nor to any that are common and notorious depravers of the Book of Common Prayer and administration of the sacraments, and of the orders, rites, and ceremonies therein prescribed, or of anything that is contained in any of the articles agreed upon in the Convocations one thousand five hundred sixty and two, or of anything contained in the book of ordering the priests and bishops; or to any that have spoken against and depraved his Majesty's sovereign authority in causes ecclesiastical; except every such person shall first acknowledge to the minister, before the churchwardens, his repentance for the same, and promise by word (if he cannot write) that he will do so no more; and except (if he can write) he shall first do the same under his handwriting, to be delivered to the minister, and by him sent to the bishop of the diocese, or ordinary of the place. Provided, that every minister so repelling any, as is specified either in this or in the next precedent constitution, shall, upon complaint, or being required by the ordinary, signify the cause thereof unto him, and therein obey his order and direction.

28. *Strangers not to be admitted to the Communion.*

The churchwardens or questmen, and their assistants, shall mark, as well as the minister, whether all and every of the parishioners come so often every year to the Holy Communion, as the laws and our constitutions do require; and whether any strangers come often and commonly from other parishes to their church; and shall shew their minister of them, lest perhaps they be admitted to the Lord's table amongst others, which they shall forbid; and remit such home to their own parish churches and ministers, there to receive the Communion with the rest of their own neighbours.

29. *Fathers not to be Godfathers in Baptism, and Children not Communicants.*

No parent shall be urged to be present, nor be admitted to answer as godfather for his own child; nor any godfather or godmother shall be suffered to make any other answer or speech, than by the Book of Common Prayer is prescribed in that behalf; neither shall any person be admitted godfather or godmother to any child at christening or confirmation, before the said person so undertaking hath received the Holy Communion.

30. *The lawful use of the Cross in Baptism explained.*

We are sorry that his Majesty's most princely care and pains, taken in the Conference at Hampton Court, amongst many other points, touching this one of the cross in baptism, hath taken no better effect with many, but that still the use of it in baptism is so greatly stuck at and impugned. For the further declaration, therefore, of the true use of this ceremony, and for the removing of all such scruple, as might anyways trouble the consciences of them who are indeed rightly religious, following the royal steps of our most worthy king, because he therein followeth the rules of the Scriptures, and the practice of the Primitive Church, we do commend to all the true members of the Church of England these our directions and observations ensuing.

First, it is to be observed, that although the Jews and Ethnicks derided both the apostles and the rest of the Christians, for preaching and believing in Him who was crucified upon the cross; yet all, both apostles and Christians, were so far from being discouraged from their profession by the ignominy of the cross, as they rather rejoiced and triumphed in it. Yea, the Holy Ghost, by the mouths of the apostles, did honour the name of the cross (being hateful among the Jews) so far, that under it he comprehended not only Christ crucified, but the force, effects, and merits of His death and passion, with all the comforts, fruits, and promises which we receive or expect thereby.

Secondly, the honour and dignity of the name of the cross begat a reverend estimation even in the Apostles' times (for aught that is known to the contrary) of the Sign of the Cross, which the Christians shortly after used in all their actions; thereby making an outward show and profession, even to the astonishment of the Jews, that they were not ashamed to acknowledge Him for their Lord and

Saviour, who died for them upon the cross. And this sign they did not only use themselves with a kind of glory, when they met with any Jews, but signed therewith their children when they were christened, to dedicate them by that badge to His service, whose benefits bestowed upon them in baptism the name of the cross did represent. And this use of the sign of the cross in baptism was held in the Primitive Church, as well by the Greeks as the Latins, with one consent and great applause. At what time, if any had opposed themselves against it, they would certainly have been censured as enemies of the name of the cross, and consequently of Christ's merits, the sign whereof they could no better endure. This continual and general use of the sign of the cross is evident by many testimonies of the ancient Fathers.

Thirdly, it must be confessed, that in process of time the sign of the cross was greatly abused in the Church of Rome, especially after that corruption of Popery had once possessed it. But the abuse of a thing doth not take away the lawful use of it. Nay, so far was it from the purpose of the Church of England to forsake and reject the Churches of Italy, France, Spain, Germany, or any such like Churches, in all things which they held and practised, that, as the apology of the Church of England confesseth, it doth with reverence retain those ceremonies, which do neither endamage the Church of God, nor offend the minds of sober men; and only departed from them in those particular points, wherein they were fallen both from themselves in their ancient integrity, and from the apostolical churches, which were their first founders. In which respect, amongst some other very ancient ceremonies, the sign of the cross in baptism hath been retained in this church, both by the judgment and practice of those reverend fathers and great divines in the days of King Edward the Sixth, of whom some constantly suffered for the profession of the truth; and others being exiled in the time of Queen Mary, did after their return, in the beginning of the reign of our late dread sovereign, continually defend and use the same. This resolution and practice of our church hath been allowed and approved by the censure upon the Communion Book in King Edward the Sixth his days, and by the harmony of confessions of later years: because, indeed, the use of this sign in baptism was ever accompanied here with such sufficient cautions and exceptions against all Popish superstition and error, as in the like cases are either fit or convenient.

First, the Church of England, since the abolishing of Popery,



hath ever held and taught, and so doth hold and teach still, that the sign of the cross used in baptism is no part of the substance of that sacrament: for when the minister, dipping the infant in water, or laying water upon the face of it (as the manner also is), hath pronounced these words, "*I baptize thee in the name of the Father, and of the Son, and of the Holy Ghost,*" the infant is fully and perfectly baptized: so as the sign of the cross being afterwards used, doth neither add anything to the virtue and perfection of baptism, nor being omitted doth detract anything from the effect and substance of it.

Secondly, it is apparent in the Communion Book, that the infant baptized is, by virtue of baptism, before it be signed with the sign of the cross, received into the congregation of Christ's flock, as a perfect member thereof, and not by any power ascribed unto the sign of the cross. So that for the very remembrance of the cross, which is very precious to all them that rightly believe in Jesus Christ, and in the other respects mentioned, the Church of England hath retained still the sign of it in baptism: following therein the primitive and apostolical churches, and accounting it a lawful outward ceremony and honourable badge, whereby the infant is dedicated to the service of Him that died upon the cross, as by the words used in the Book of Common Prayer it may appear.

Lastly, the use of the sign of the cross in baptism, being thus purged from all Popish superstition and error, and reduced in the Church of England to the primary institution of it, upon those true rules of doctrine concerning things indifferent which are consonant to the Word of God and the judgment of all the ancient fathers, we hold it the part of every private man, both minister and other, reverently to retain the true use of it prescribed by public authority; considering that things of themselves indifferent do in some sort alter their natures, when they are either commanded or forbidden by a lawful magistrate; and may not be omitted at every man's pleasure, contrary to the law, when they be commanded, nor used when they are prohibited.

MINISTERS, THEIR ORDINATION, FUNCTION, AND CHARGE.

31. *Four solemn Times appointed for the making of Ministers.*

Forasmuch as the ancient Fathers of the Church, led by example of the apostles, appointed prayers and fasts to be used at the solemn ordering of ministers; and to that purpose allotted certain times, in which only sacred orders might be given or conferred; we, following their holy and religious example, do constitute and decree, that no deacons or ministers be made and ordained, but only upon the Sundays immediately following *Jejunia quatuor temporum*, commonly called *Ember Weeks*, appointed in ancient time for prayer and fasting (purposely for this cause at their first institution), and so continued at this day in the Church of England: and that this be done in the cathedral or parish church where the bishop resideth, and in the time of Divine Service, in the presence not only of the archdeacon, but of the dean and two prebendaries at the least, or (if they shall happen by any lawful cause to be let or hindered) in the presence of four other grave persons, being masters of arts at the least, and allowed for public preachers.

32. *None to be made Deacon and Minister both in one day.*

The office of deacon being a step or degree to the ministry, according to the judgment of the ancient fathers and the practice of the Primitive Church, we do ordain and appoint, that hereafter no bishop shall make any person, of what qualities or gifts soever, a deacon and a minister both together upon one day; but that the order in that behalf prescribed in the book of making and consecrating bishops, priests, and deacons, be strictly observed. Not that always every deacon should be kept from the ministry for a whole year, when the bishop shall find good cause to the contrary; but that there being now four times appointed in every year for the ordination of deacons and ministers, there may ever be some time of trial of their behaviour in the office of deacon, before they be admitted to the order of priesthood.

33. *The Titles of such as are to be made Ministers.*

It hath been long since provided, by many decrees of the ancient fathers, that none should be admitted either deacon or priest, who had not first some certain place where he might use his function. According to which examples we do ordain, that henceforth no person shall be admitted into sacred orders, except he shall at that time exhibit to the bishop, of whom he desireth imposition of hands, a presentation of himself to some ecclesiastical preferment then void in that diocese; or shall bring to the said bishop a true and undoubted certificate, that either he is provided of some church within the said diocese, where he may attend the cure of souls, or of some minister's place vacant, either in the cathedral church of that diocese, or in some other collegiate church therein also situate, where he may execute his ministry; or that he is a fellow, or in right as a fellow, or to be a conduct or chaplain, in some college in Cambridge or Oxford; or except he be a Master of Arts of five years' standing, that liveth of his own charge in either of the universities; or except by the bishop himself, that doth ordain him minister, he be shortly after to be admitted either to some benefice or curateship then void. And if any bishop shall admit any person into the ministry, that hath none of these titles as is aforesaid, then he shall keep and maintain him, with all things necessary, till he do prefer him to some ecclesiastical living. And if the said bishop shall refuse to do so, he shall be suspended by the archbishop, being assisted with another bishop, from giving of orders by the space of a year.

34. *The Quality of such as are to be made Ministers.*

No bishop shall henceforth admit any person into sacred orders which is not of his own diocese, except he be either of one of the universities of this realm, or except he shall bring letters dimissory (so termed) from the bishop of whose diocese he is; and desiring to be a deacon, is three-and-twenty years old; and to be a priest, four-and-twenty years complete; and hath taken some degree of school in either of the said universities; or at the least, except he be able to yield an account of his faith in Latin, according to the Articles of Religion approved in the synod of the bishops and clergy

of this realm, one thousand five hundred sixty and two, and to confirm the same by sufficient testimonies out of the Holy Scriptures; and except, moreover, he shall then exhibit letters testimonial of his good life and conversation, under the seal of some college of Cambridge or Oxford, where before he remained, or of three or four grave ministers, together with the subscription and testimony of other credible persons, who have known his life and behaviour by the space of three years next before.

35. *The Examination of such as are to be made Ministers.*

The bishop, before he admit any person to holy orders, shall diligently examine him in the presence of those ministers that shall assist him at the imposition of hands: and if the said bishop have any lawful impediment, he shall cause the said ministers carefully to examine every such person so to be ordered. Provided, that they who shall assist the bishop in examining and laying on of hands, shall be of his cathedral church, if they may conveniently be had, or other sufficient preachers of the same diocese, to the number of three at the least: and if any bishop or suffragan shall admit any to sacred orders who is not so qualified and examined, as before we have ordained, the archbishop of his province, having notice thereof, and being assisted therein by one bishop, shall suspend the said bishop or suffragan so offending from making either deacons or priests for the space of two years.

36. *Declaration and Subscription required of such as are to be made Ministers.*

No person shall hereafter be received into the ministry, nor either by institution or collation admitted to any ecclesiastical living, nor suffered to preach, to catechise, or to be a lecturer or reader of divinity in either university, or in any cathedral or collegiate church, city, or market-town, parish church, chapel, or in any other place within this realm, except he be licensed either by the archbishop, or by the bishop of the diocese where he is to be placed, under their hands and seals, or by one of the two universities under their seal likewise; and except he shall first



make and subscribe the following declaration, which, for the avoiding all ambiguities, he shall subscribe in this order and form of words, setting down both his Christian and surname, viz.:—

"*I*, A. B., *do solemnly make the following declaration*:—

"*I assent to the Thirty-nine Articles of Religion, and to the Book of Common Prayer, and of the Ordering of Bishops, Priests, and Deacons: I believe the doctrine of the United Church of England and Ireland, as therein set forth, to be agreeable to the Word of God; and in public prayer and administration of the sacraments, I will use the form in the said book prescribed, and none other, except so far as shall be ordered by lawful authority.*"

And if any bishop shall ordain, admit, or license any, as is aforesaid, except he first have declared and subscribed in manner and form as here we have appointed, he shall be suspended from giving of orders and licences to preach, for the space of twelve months. But if either of the universities shall offend therein, we leave them to the danger of the law, and his Majesty's censure.

37. *Declaration and Subscription before the Diocesan.*

None licensed, as is aforesaid, to preach, read, lecture, or catechise, coming to reside in any diocese, shall be permitted there to preach, read, lecture, catechise, or minister the sacraments, or to execute any other ecclesiastical function, by what authority soever he be thereunto admitted, unless he first make and subscribe the declaration aforesaid, in the presence of the bishop of the diocese wherein he is to preach, read, lecture, catechise, or administer the sacraments, as aforesaid.

38. *Revolters after Declaration and Subscription censured.*

If any minister, after he hath made and subscribed the declaration aforesaid, shall omit to use the form of prayer, or any of the orders or ceremonies prescribed in the Communion Book, let him be suspended; and if after a month he do not reform and submit himself, let him be excommunicated; and then, if he shall not submit himself within the space of another month, let him be deposed from the ministry.

39. *Cautions for Institution of Ministers into Benefices.*

No bishop shall institute any to a benefice, who hath been ordained by any other bishop, except he first shew unto him his letters of orders, and bring him a sufficient testimony of his former good life and behaviour, if the bishop shall require it; and lastly, shall appear, upon due examination, to be worthy of his ministry.

40. *Declaration against Simony at Institution into Benefices.*

To avoid the detestable sin of simony, because buying and selling of spiritual and ecclesiastical functions, offices, promotions, dignities, and livings is execrable before God; therefore the archbishop, and all and every bishop or bishops, or any other person or persons having authority to admit, institute, collate, install, or to confirm the election of any archbishop, bishop, or other person or persons, to any spiritual or ecclesiastical function, dignity, promotion, title, office, jurisdiction, place, or benefice, with cure or without cure, or to any ecclesiastical living whatsoever, shall, before every such admission, institution, collation, installation, or confirmation of election, respectively cause to be made by every person hereafter to be admitted, instituted, collated, installed, or confirmed in or to any archbishopric, bishopric, or other spiritual or ecclesiastical function, dignity, promotion, title, office, jurisdiction, place, or benefice, with cure or without cure, or in or to any ecclesiastical living whatsoever, this declaration in manner and form following, the same to be made by every one whom it concerneth in his own person, and not by a proctor: "*I*, A. B., *solemnly declare, that I have not made, by myself, or by any other person on my behalf, any payment, contract, or promise of any kind whatsoever, which to the best of my knowledge or belief is simoniacal, touching or concerning the obtaining the preferment of* ——; *nor will I at any time hereafter perform or satisfy, in whole or in part, any such kind of payment, contract, or promise, made by any other without my knowledge or consent.*"



41. *Licences for Plurality of Benefices limited, and Residence enjoined.*

No licence or dispensation for the keeping of more benefices with cure than one, shall be granted to any but such only as shall be thought very well worthy for his learning, and very well able and sufficient to discharge his duty; that is, who shall have taken the degree of a master of arts at the least in one of the universities of this realm, and be a public and sufficient preacher licensed. Provided always, that he be, by a good and sufficient caution, bound to make his personal residence in each his said benefices for some reasonable time in every year, and that the said benefices be not more than thirty miles distant asunder; and lastly, that he have under him in the benefice, where he doth not reside, a preacher lawfully allowed, that is able sufficiently to teach and instruct the people.

42. *Residence of Deans in their Churches.*

Every dean, master, or warden, or chief governor of any cathedral or collegiate church, shall be resident in his said cathedral or collegiate church fourscore and ten days *conjunctim* or *divisim* in every year at the least, and then shall continue there in preaching the Word of God, and keeping good hospitality, except he shall be otherwise let with weighty and urgent causes, to be approved by the bishop of the diocese, or in any other lawful sort dispensed with. And when he is present, he, with the rest of the canons or prebendaries resident, shall take special care that the statutes and laudable customs of their church (not being contrary to the Word of God, or prerogative royal), the statutes of this realm being in force concerning ecclesiastical order, and all other constitutions now set forth and confirmed by his Majesty's authority, and such as shall be lawfully enjoined by the bishop of the diocese in his visitation, according to the statutes and customs of the same church, or the ecclesiastical laws of this realm, be diligently observed; and that the petty canons, vicars choral, and other ministers of their church, be urged to the study of the Holy Scriptures; and every one of them to have the New Testament, not only in English, but also in Latin.

43. *Deans and Prebendaries to preach during their Residence.*

The dean, master, warden, or chief governor, prebendaries, and canons in every cathedral and collegiate church, shall not only preach there in their own persons so often as they are bound by law, statute, ordinance, or custom, but shall likewise preach in other churches of the same diocese where they are resident, and especially in those places whence they or their church receive any yearly rents or profits. And in case they themselves be sick, or lawfully absent, they shall substitute such licensed preachers to supply their turns, as by the bishop of the diocese shall be thought meet to preach in cathedral churches. And if any otherwise neglect or omit to supply his course, as is aforesaid, the offender shall be punished by the bishop, or by him or them to whom the jurisdiction of that church appertaineth, according to the quality of the offence.

44. *Prebendaries to be resident upon their Benefices.*

No prebendaries nor canons in cathedral or collegiate churches having one or more benefices with cure (and not being residentiaries in the same cathedral or collegiate churches), shall, under colour of their said prebends, absent themselves from their benefices with cure above the space of one month in the year, unless it be for some urgent cause, and certain time to be allowed by the bishop of the diocese. And such of the said canons and prebendaries, as by the ordinances of the cathedral or collegiate churches do stand bound to be resident in the same, shall so among themselves sort and proportion the times of the year, concerning residency to be kept in the said churches, as that some of them always shall be personally resident there; and that all those who be or shall be residentiaries in any cathedral or collegiate church, shall, after the days of their residency appointed by their local statutes or customs expired, presently repair to their benefices, or some one of them, or to some other charge where the law requireth their presence, there to discharge their duties according to the laws in that case provided. And the bishop of the diocese shall see the same to be duly performed and put in execution.



45. *Beneficed Preachers, being resident upon their Livings, to preach every Sunday.*

Every beneficed man allowed to be a preacher, and residing on his benefice, having no lawful impediment, shall in his own cure, or in some other church or chapel, where he may conveniently, near adjoining (where no preacher is), preach one sermon every Sunday of the year; wherein he shall soberly and sincerely divide the word of truth, to the glory of God, and to the best edification of the people.

46. *Beneficed Men, not Preachers, to procure Monthly Sermons.*

Every beneficed man, not allowed to be a preacher, shall procure sermons to be preached in his cure once in every month at the least, by preachers lawfully licensed, if his living, in the judgment of the ordinary, will be able to bear it. And upon every Sunday, when there shall not be a sermon preached in his cure, he or his curate shall read some one of the homilies prescribed or to be prescribed by authority, to the intents aforesaid.

47. *Absence of Beneficed Men to be supplied by Curates that are allowed Preachers.*

Every beneficed man, licensed by the laws of this realm upon urgent occasions of other service not to reside upon his benefice, shall cause his cure to be supplied by a curate that is a sufficient and licensed preacher, if the worth of the benefice will bear it. But whosoever hath two benefices shall maintain a preacher licensed in the benefice where he doth not reside, except he preach himself at both of them usually.

48. *None to be Curates but allowed by the Bishop.*

No curate or minister shall be permitted to serve in any place, without examination and admission of the bishop of the diocese, or ordinary of the place, having episcopal jurisdiction, in writing under his hand and seal, having respect to the greatness of the cure, and meetness of the party. And the said curates and ministers, if they remove from one diocese to another, shall not be by any means admitted to serve without testimony of the bishop of the diocese, or ordinary of the place, as aforesaid, whence they came, in writing, of their honesty, ability, and conformity to the

ecclesiastical laws of the Church of England. Nor shall any serve more than one church or chapel upon one day, except that chapel be a member of the parish church, or united thereunto; and unless the said church or chapel, where such a minister shall serve in two places, be not able in the judgment of the bishop or ordinary, as aforesaid, to maintain a curate.

49. *Ministers, not allowed Preachers, may not expound.*

No person whatsoever not examined and approved by the bishop of the diocese, or not licensed, as is aforesaid, for a sufficient or convenient preacher, shall take upon him to expound in his own cure, or elsewhere, any scripture or matter of doctrine; but shall only study to read plainly and aptly (without glossing or adding) the homilies already set forth, or hereafter to be published by lawful authority, for the confirmation of the true faith, and for the good instruction and edification of the people.

50. *Strangers not admitted to preach without shewing their Licence.*

Neither the minister, churchwardens, nor any other officers of the church, shall suffer any man to preach within their churches or chapels, but such as, by shewing their licence to preach, shall appear unto them to be sufficiently authorized thereunto, as is aforesaid.

51. *Strangers not admitted to preach in Cathedral Churches without sufficient Authority.*

The deans, presidents, and residentiaries of any cathedral or collegiate church shall suffer no stranger to preach unto the people in their churches, except they be allowed by the archbishop of the province, or by the bishop of the same diocese, or by either of the universities. And if any in his sermon shall publish any doctrine, either strange, or disagreeing from the Word of God, or from any of the Articles of Religion agreed upon in the Convocation House, anno 1562, or from the Book of Common Prayer; the dean or the residents shall, by their letters subscribed with some of their hands that heard him, so soon as may be, give notice of the same to the bishop of the diocese, that he may determine the matter, and take such order therein as he shall think convenient.

52. *The Names of strange Preachers to be noted in a Book.*

That the bishop may understand (if occasion so require) what sermons are made in every church of his diocese, and who presume to preach without licence, the churchwardens and sidemen shall see that the names of all preachers, which come to their church from any other place, be noted in a book, which they shall have ready for that purpose; wherein every preacher shall subscribe his name, the day when he preached, and the name of the bishop of whom he had licence to preach.

53. *No public Opposition between Preachers.*

If any preacher shall in the pulpit particularly, or namely of purpose, impugn or confute any doctrine delivered by any other preacher in the same church, or in any church near adjoining, before he hath acquainted the bishop of the diocese therewith, and received order from him what to do in that case, because upon such public dissenting and contradicting there may grow much offence and disquietness unto the people; the churchwardens, or party grieved, shall forthwith signify the same to the said bishop, and not suffer the said preacher any more to occupy that place which he hath once abused, except he faithfully promise to forbear all such matter of contention in the church, until the bishop hath taken further order therein; who shall with all convenient speed so proceed therein, that public satisfaction may be made in the congregation where the offence was given. Provided, that if either of the parties offending do appeal, he shall not be suffered to preach *pendente lite.*

54. *The Licences of Preachers refusing Conformity to be void.*

If any man licensed heretofore to preach, by any archbishop, bishop, or by either of the universities, shall at any time from henceforth refuse to conform himself to the laws, ordinances, and rites ecclesiastical established in the Church of England, he shall be admonished by the bishop of the diocese, or ordinary of the place, to submit himself to the use and due exercise of the same. And if, after such admonition, he do not conform himself within the space of one month, we determine and decree, that the licence of every such preacher shall thereupon be utterly void, and of none effect.

55. *The Form of a Prayer to be used by all Preachers before their Sermons.*

Before all sermons, lectures, and homilies, the preachers and ministers shall move the people to join with them in prayer in this form, or to this effect, as briefly as conveniently they may: Ye shall pray for Christ's holy Catholic Church, that is, for the whole congregation of Christian people dispersed throughout the whole world, and especially for the Churches of England, Scotland, and Ireland: and herein I require you most especially to pray for the King's most excellent majesty, our sovereign lord James, King of England, Scotland, France, and Ireland, defender of the faith, and supreme governor in these his realms, and all other his dominions and countries, over all persons, in all causes, as well ecclesiastical as temporal: ye shall also pray for our gracious Queen Anne, the noble Prince Henry, and the rest of the King and Queen's royal issue: ye shall also pray for the ministers of God's holy Word and Sacraments, as well archbishops and bishops, as other pastors and curates: ye shall also pray for the King's most honourable Council, and for all the nobility and magistrates of this realm; that all and every of these, in their several callings, may serve truly and painfully to the glory of God, and the edifying and well-governing of His people, remembering the account that they must make: also ye shall pray for the whole commons of this realm, that they may live in the true faith and fear of God, in humble obedience to the King, and brotherly charity one to another. Finally, let us praise God for all those which are departed out of this life in the faith of Christ, and pray unto God, that we may have grace to direct our lives after their good example; that, this life ended, we may be made partakers with them of the glorious resurrection in the life everlasting;—always concluding with the Lord's Prayer.

56. *Preachers and Lecturers to read Divine Service, and administer the Sacraments, Twice a Year at the least.*

Every minister, being possessed of a benefice that hath cure and charge of souls, although he chiefly attend to preaching, and hath a curate under him to execute the other duties which are to be performed for him in the church, and likewise every other stipendiary preacher that readeth any lecture, or catechiseth, or preacheth in any church or chapel, shall twice at the least every year read himself the Divine Service upon two several Sundays



publicly, and at the usual times, both in the forenoon and afternoon, in the church which he so possesseth, or where he readeth, catechiseth, or preacheth, as is aforesaid; and shall likewise as often in every year administer the sacraments of Baptism (if there be any to be baptized), and of the Lord's Supper, in such manner and form, and with the observation of all such rites and ceremonies, as are prescribed by the Book of Common Prayer in that behalf; which if he do not accordingly perform, then shall he that is possessed of a benefice (as before) be suspended; and he that is but a reader, preacher, or catechiser, be removed from his place by the bishop of the diocese, until he or they shall submit themselves to perform all the said duties, in such manner and sort as before is prescribed.

57. *The Sacraments not to be refused at the Hands of Unpreaching Ministers.*

Whereas divers persons, seduced by false teachers, do refuse to have their children baptized by a minister that is no preacher, and to receive the Holy Communion at his hands in the same respect, as though the virtue of those sacraments did depend upon his ability to preach; forasmuch as the doctrine both of Baptism and of the Lord's Supper is so sufficiently set down in the Book of Common Prayer to be used at the administration of the said sacraments, as nothing can be added unto it that is material and necessary; we do require and charge every such person, seduced as aforesaid, to reform that their wilfulness, and to submit himself to the order of the Church in that behalf; both the said sacraments being equally effectual, whether they be ministered by a minister that is no preacher, or by one that is a preacher. And if any hereafter shall offend herein, or leave their own parish churches in that respect, and communicate, or cause their children to be baptized, in other parishes abroad, and will not be moved thereby to reform that their error and unlawful course; let them be presented to the ordinary of the place by the minister, churchwardens, and sidemen, or questmen of the parishes were they dwell, and there receive such punishment, by ecclesiastical censures, as such obstinacy doth worthily deserve: that is, let them (persisting in their wilfulness) be suspended, and then, after a month's further obstinacy, excommunicated. And likewise if any parson, vicar, or curate shall, after the publishing hereof, either receive to the Communion any such persons which are not of his own church

and parish, or shall baptize any of their children, thereby strengthening them in their said errors; let him be suspended, and not released thereof, until he do faithfully promise that he will not afterwards offend therein.

58. *Ministers reading Divine Service and administering the Sacraments to wear Surplices, and Graduates therewithal Hoods.*

Every minister saying the public prayers, or ministering the sacraments, or other rites of the Church, shall wear a decent and comely surplice with sleeves, to be provided at the charge of the parish. And if any question arise touching the matter, decency, or comeliness thereof, the same shall be decided by the discretion of the ordinary. Furthermore, such ministers as are graduates shall wear upon their surplices, at such times, such hoods as by the orders of the universities are agreeable to their degrees, which no minister shall wear (being no graduate) under pain of suspension. Notwithstanding it shall be lawful for such ministers as are not graduates to wear upon their surplices, instead of hoods, some decent tippet of black, so it be not silk.

59. *Ministers to Catechise every Sunday.*

Every parson, vicar, or curate, upon every Sunday and holyday, before Evening Prayer, shall, for half an hour or more, examine and instruct the youth and ignorant persons of his parish, in the Ten Commandments, the Articles of the Belief, and in the Lord's Prayer; and shall diligently hear, instruct, and teach them the Catechism set forth in the Book of Common Prayer. And all fathers, mothers, masters, and mistresses shall cause their children, servants, and apprentices which have not learned the Catechism, to come to the church at the time appointed, obediently to hear, and to be ordered by the minister, until they have learned the same. And if any minister neglect his duty herein, let him be sharply reproved upon the first complaint, and true notice thereof given to the bishop or ordinary of the place. If, after submitting himself, he shall willingly offend therein again, let him be suspended: if so the third time, there being little hope that he will be therein reformed, then excommunicated, and so remain until he will be reformed. And likewise if any of the said fathers, mothers, masters, or mistresses, children, servants, or apprentices shall

neglect their duties, as the one sort in not causing them to come, and the other in refusing to learn, as aforesaid; let them be suspended by their ordinaries (if they be not children), and if they so persist by the space of a month, then let them be excommunicated.

60. *Confirmation to be performed once in Three Years.*

Forasmuch as it hath been a solemn, ancient, and laudable custom in the Church of God, continued from the Apostles' times, that all bishops should lay their hands upon children baptized and instructed in the Catechism of Christian Religion, praying over them, and blessing them, which we commonly call *Confirmation*; and that this holy action hath been accustomed in the Church in former ages to be performed in the bishop's visitation every third year; we will and appoint, that every bishop or his suffragan, in his accustomed visitation, do in his own person carefully observe the said custom. And if in that year, by reason of some infirmity, he be not able personally to visit, then he shall not omit the execution of that duty of confirmation the next year after, as he may conveniently.

61. *Ministers to prepare Children for Confirmation.*

Every minister that hath cure and charge of souls, for the better accomplishing of the orders prescribed in the Book of Common Prayer concerning Confirmation, shall take especial care that none shall be presented to the bishop for him to lay his hands upon, but such as can render an account of their faith according to the Catechism in the said book contained. And when the bishop shall assign any time for the performance of that part of his duty, every such minister shall use his best endeavour to prepare and make able, and likewise to procure as many as he can to be then brought, and by the bishop to be confirmed.

62. *Ministers not to marry any Persons without Banns, or Licence.*

No minister, upon pain of suspension *per triennium ipso facto*, shall celebrate matrimony between any persons, without a faculty or licence granted by some of the persons in these our constitutions expressed, except the banns of matrimony have been first published three several Sundays, or holydays, in the time of Divine Service, in the parish churches and chapels where the said parties dwell,

according to the Book of Common Prayer. Neither shall any minister, upon the like pain, under any pretence whatsoever, join any persons so licensed in marriage at any unseasonable times, but only between the hours of eight and twelve in the forenoon, nor in any private place, but either in the said churches or chapels where one of them dwelleth, and likewise in time of Divine Service; nor when banns are thrice asked, and no licence in that respect necessary, before the parents or governors of the parties to be married, being under the age of twenty-and-one years, shall either personally, or by sufficient testimony, signify to him their consents given to the said marriage.

63. *Ministers of exempt Churches not to marry without Banns, or Licence.*

Every minister, who shall hereafter celebrate marriage between any persons contrary to our said constitutions, or any part of them, under colour of any peculiar liberty or privilege claimed to appertain to certain churches and chapels, shall be suspended *per triennium* by the ordinary of the place where the offence shall be committed. And if any such minister shall afterwards remove from the place where he hath committed that fault, before he be suspended, as is aforesaid, then shall the bishop of the diocese, or ordinary of the place where he remaineth, upon certificate under the hand and seal of the other ordinary from whose jurisdiction he removed, execute that censure upon him.

64. *Ministers solemnly to bid Holydays.*

Every parson, vicar, or curate shall in his several charge declare to the people, every Sunday at the time appointed in the Communion Book, whether there be any holydays or fasting-days the week following. And if any do hereafter wittingly offend herein, and being once admonished thereof by his ordinary, shall again omit that duty, let him be censured according to law, until he submit himself to the due performance of it.

65. *Ministers solemnly to denounce Recusants and Excommunicates.*

All ordinaries shall, in their several jurisdictions, carefully see and give order, that as well those who for obstinate refusing to frequent Divine Service established by public authority within th is



realm of England, as those also (especially of the better sort and condition) who for notorious contumacy, or other notable crimes, stand lawfully excommunicate (unless within three months immediately after the said sentence of excommunication pronounced against them, they reform themselves, and obtain the benefit of absolution), be every six months ensuing, as well in the parish church as in the cathedral church of the diocese in which they remain, by the minister openly in time of Divine Service, upon some Sunday, denounced and declared excommunicate, that others may be thereby both admonished to refrain their company and society, and excited the rather to procure out a writ *De excommunicato capiendo*, thereby to bring and reduce them into due order and obedience. Likewise the registrar of every ecclesiastical court shall yearly between Michaelmas and Christmas duly certify the archbishop of the province of all and singular the premises aforesaid.

66. *Ministers to confer with Recusants.*

Every minister being a preacher, and having any Popish recusant or recusants in his parish, and thought fit by the bishop of the diocese, shall labour diligently with them from time to time, thereby to reclaim them from their errors. And if he be no preacher, or not such a preacher, then he shall procure, if he can possibly, some that are preachers so qualified, to take pains with them for that purpose. If he can procure none, then he shall inform the bishop of the diocese thereof, who shall not only appoint some neighbour preacher or preachers adjoining to take that labour upon them, but himself also, as his important affairs will permit him, shall use his best endeavour, by instruction, persuasion, and all good means he can devise, to reclaim both them and all other within his diocese so affected.

67. *Ministers to visit the Sick.*

When any person is dangerously sick in any parish, the minister, or curate, having knowledge thereof, shall resort unto him or her (if the disease be not known, or probably suspected, to be infectious), to instruct and comfort them in their distress, according to the order of the Communion Book, if he be no preacher; or if he be a preacher, then as he shall think most needful and convenient. And when any is passing out of this life, a bell shall be

tolled, and the minister shall not then slack to do his last duty. And after the party's death, if it so fall out, there shall be rung no more than one short peal, and one other before the burial, and one other after the burial.

68. *Ministers not to refuse to Christen or Bury.*

No minister shall refuse or delay to christen any child according to the form of the Book of Common Prayer, that is brought to the church to him upon Sundays or holydays to be christened, or to bury any corpse that is brought to the church or churchyard, convenient warning being given him thereof before, in such manner and form as is prescribed in the said Book of Common Prayer. And if he shall refuse to christen the one, or bury the other (except the party deceased were denounced excommunicated, *majori excommunicatione*, for some grievous and notorious crime, and no man able to testify of his repentance), he shall be suspended by the bishop of the diocese from his ministry by the space of three months.

69. *Ministers not to defer Christening, if the Child be in Danger.*

If any minister, being duly, without any manner of collusion, informed of the weakness and danger of death of any infant unbaptized in his parish, and thereupon desired to go or come to the place where the said infant remaineth, to baptize the same, shall either wilfully refuse so to do, or of purpose, or of gross negligence, shall so defer the time, as, when he might conveniently have resorted to the place, and have baptized the said infant, it dieth, through such his default, unbaptized; the said minister shall be suspended for three months, and before his restitution shall acknowledge his fault, and promise, before his ordinary, that he will not wittingly incur the like again. Provided, that where there is a curate, or a substitute, this constitution shall not extend to the parson or vicar himself, but to the curate or substitute present.

70. *Ministers to keep a Register of Christenings, Weddings, and Burials.*

In every parish church and chapel within this realm shall be provided one parchment book, at the charge of the parish, wherein shall be written the day and year of every christening, wedding,



and burial which have been in that parish since the time that the law was first made in that behalf, so far as the ancient books thereof can be procured, but especially since the beginning of the reign of the late Queen. And for the safe keeping of the said book, the churchwardens, at the charge of the parish, shall provide one sure coffer, with three locks and keys: whereof the one to remain with the minister, and the other two with the churchwardens, severally; so that neither the minister without the two churchwardens, nor the churchwardens without the minister, shall at any time take that book out of the said coffer. And henceforth upon every sabbath-day, immediately after Morning or Evening Prayer, the minister and churchwardens shall take the said parchment book out of the said coffer, and the ministers, in the presence of the churchwardens, shall write and record in the said book the names of all persons christened, together with the names and surnames of their parents, and also the names of all persons married and buried in that parish in the week before, and the day and year of every such christening, marriage, and burial; and, that done, they shall lay up that book in the coffer, as before; and the minister and churchwardens unto every page of that book, when it shall be filled with such inscriptions, shall subscribe their names. And the churchwardens shall once every year, within one month after the five-and-twentieth day of March, transmit unto the bishop of the diocese, or his chancellor, a true copy of the names of all persons christened, married, or buried in their parish in the year before, ended the said five-and-twentieth day of March, and the certain days and months in which every such christening, marriage, and burial was had, to be subscribed with the hands of the said minister and churchwardens, to the end the same may faithfully be preserved in the registry of the said bishop—which certificate shall be received without fee. And if the minister or churchwardens shall be negligent in performance of anything herein contained, it shall be lawful for the bishop, or his chancellor, to convent them, and proceed against every of them as contemners of this our constitution.

71. *Ministers not to Preach, or administer the Communion, in Private Houses.*

No minister shall preach, or administer the Holy Communion, in any private house, except it be in times of necessity, when any,

being either so impotent as he cannot go to the church, or very dangerously sick, are desirous to be partakers of the sacrament, upon pain of suspension for the first offence, and excommunication for the second. Provided, that houses are here reputed for private houses, wherein are no chapels dedicated and allowed by the ecclesiastical laws of this realm. And provided also, under the pains before expressed, that no chaplains do preach or administer the Communion in any other places, but in the chapels of the said houses; and that also they do the same very seldom upon Sundays and holydays; so that both the lords and masters of the said houses, and their families, shall at other times resort to their own parish churches, and there receive the Holy Communion at the least once every year.

72. *Ministers not to appoint Public or Private Fasts or Prophecies, or to Exorcise, but by Authority.*

No minister or ministers shall, without the licence and direction of the bishop of the diocese first obtained and had under his hand and seal, appoint or keep any solemn fasts, either publicly or in any private houses, other than such as by law are, or by public authority shall be appointed; nor shall be wittingly present at any of them, under pain of suspension for the first fault, of excommunication for the second, and of deposition from the ministry for the third. Neither shall any minister not licensed, as is aforesaid, presume to appoint or hold any meetings for sermons, commonly termed by some prophecies or exercises, in market-towns, or other places, under the said pains: nor, without such licence, to attempt upon any pretence whatsoever, either of possession or obsession, by fasting and prayer, to cast out any devil or devils, under pain of the imputation of imposture or cosenage, and deposition from the ministry.

73. *Ministers not to hold Private Conventicles.*

Forasmuch as all conventicles, and secret meetings of priests and ministers, have been ever justly accounted very hurtful to the state of the Church wherein they live; we do now ordain and constitute, that no priests, or ministers of the Word of God, or any other persons, shall meet together in any private house, or elsewhere, to consult upon any matter or course to be taken by them, or upon their motion or direction by any other, which may any way tend to



the impeaching or depraving of the doctrine of the Church of England, or of the Book of Common Prayer, or of any part of the government and discipline now established in the Church of England, under pain of excommunication *ipso facto*.

74. *Decency in Apparel enjoined to Ministers.*

The true, ancient, and flourishing Churches of Christ, being ever desirous that their prelacy and clergy might be had as well in outward reverence, as otherwise regarded for the worthiness of their ministry, did think it fit, by a prescript form of decent and comely apparel, to have them known to the people, and thereby to receive the honour and estimation due to the special messengers and ministers of Almighty God: we therefore, following their grave judgment, and the ancient custom of the Church of England, and hoping that in time newfangleness of apparel in some factious persons will die of itself, do constitute and appoint, that the archbishops and bishops shall not intermit to use the accustomed apparel of their degrees. Likewise all deans, masters of colleges, archdeacons, and prebendaries in cathedral and collegiate churches (being priests or deacons), doctors in divinity, law, and physic, bachelors in divinity, masters of arts, and bachelors of law, having any ecclesiastical living, shall usually wear gowns with standing collars and sleeves strait at the hands, or wide sleeves, as is used in the universities, with hoods or tippets of silk or sarcenet, and square caps. And that all other ministers admitted or to be admitted into that function shall also usually wear the like apparel as is aforesaid, except tippets only. We do further in like manner ordain, that all the said ecclesiastical persons abovementioned shall usually wear in their journeys cloaks with sleeves, commonly called priest's cloaks, without guards, welts, long buttons, or cuts: and no ecclesiastical person shall wear any coif or wrought nightcap, but only plain night-caps of black silk, satin, or velvet. In all which particulars concerning the apparel here prescribed, our meaning is not to attribute any holiness or special worthiness to the said garments, but for decency, gravity, and order, as is before specified. In private houses, and in their studies, the said persons ecclesiastical may use any comely and scholarlike apparel, provided that it be not cut or pinkt; and that in public they go not in their doublet and hose, without coats or cassocks; and that they wear not any light-coloured stockings. Likewise poor



beneficed men and curates (not being able to provide themselves long gowns) may go in short gowns of the fashion aforesaid.

75. *Sober Conversation required in Ministers.*

No ecclesiastical person shall at any time, other than for their honest necessities, resort to any taverns or alehouses, neither shall they board or lodge in any such places. Furthermore, they shall not give themselves to any base or servile labour, or to drinking or riot, spending their time idly by day or by night, playing at dice, cards, or tables, or any other unlawful games: but at all times convenient they shall hear or read somewhat of the Holy Scriptures, or shall occupy themselves with some other honest study or exercise, always doing the things which shall appertain to honesty, and endeavouring to profit the Church of God; having always in mind, that they ought to excel all others in purity of life, and should be examples to the people to live well and christianly, under pain of ecclesiastical censures, to be inflicted with severity, according to the qualities of their offences.

76. *Ministers at no time to forsake their Calling.*

No man being admitted a deacon or minister shall from thenceforth voluntarily relinquish the same, nor afterward use himself in the course of his life as a layman, upon pain of excommunication. And the names of all such men so forsaking their calling, the churchwardens of the parish where they dwell shall present to the bishop of the diocese, or to the ordinary of the place having episcopal jurisdiction.

SCHOOLMASTERS.

77. *None to teach School without Licence.*

No man shall teach either in public school, or private house, but such as shall be allowed by the bishop of the diocese, or ordinary of the place, under his hand and seal, being found meet as well for his learning and dexterity in teaching, as for sober and honest conversation, and also for right understanding of God's true religion; and also except he shall first subscribe to the first and third articles aforementioned simply, and to the two first clauses of the second article.



78. *Curates desirous to teach to be licensed before others.*

In what parish church or chapel soever there is a curate, which is a master of arts, or bachelor of arts, or is otherwise well able to teach youth, and will willingly so do, for the better increase of his living, and training up of children in principles of true religion; we will and ordain, that a licence to teach youth of the parish where he serveth be granted to none by the ordinary of that place, but only to the said curate. Provided always, that this constitution shall not extend to any parish or chapel in country towns, where there is a public school founded already; in which case we think it not meet to allow any to teach grammar, but only him that is allowed for the said public school.

79. *The Duty of Schoolmasters.*

All schoolmasters shall teach, in English or Latin, as the children are able to bear, the larger or shorter Catechism heretofore by public authority set forth. And as often as any sermon shall be upon holy and festival days within the parish where they teach, they shall bring their scholars to the church where such sermon shall be made, and there see them quietly and soberly behave themselves; and shall examine them at times convenient, after their return, what they have borne away of such sermon. Upon other days, and at other times, they shall train them up with such sentences of Holy Scripture as shall be most expedient to induce them to all godliness: and they shall teach the grammar set forth by King Henry the Eighth, and continued in the times of King Edward the Sixth and Queen Elizabeth of noble memory, and none other. And if any schoolmaster, being licensed, and having subscribed as aforesaid, shall offend in any of the premises, or either speak, write, or teach against anything whereunto he hath formerly subscribed (if upon admonition by the ordinary he do not amend and reform himself), let him be suspended from teaching school any longer.

THINGS APPERTAINING TO CHURCHES.

80. *The Great Bible, and Book of Common Prayer, to be had in every Church.*

The churchwardens or questmen of every church and chapel shall, at the charge of the parish, provide the Book of Common Prayer, lately explained in some few points by his Majesty's authority, according to the laws and his Highness's prerogative in that behalf, and that with all convenient speed, but at the furthest within two months after the publishing of these our constitutions. And if any parishes be yet unfurnished of the Bible of the largest volume, or of the books of homilies allowed by authority, the said churchwardens shall within convenient time provide the same at the like charge of the parish.

81. *A Font of Stone for Baptism in every Church.*

According to a former constitution, too much neglected in many places, we appoint, that there shall be a font of stone in every church and chapel where baptism is to be ministered; the same to be set in the ancient usual places, in which only font the minister shall baptize publicly

82. *A decent Communion Table in every Church.*

Whereas we have no doubt but that in all churches within the realm of England, convenient and decent tables are provided and placed for the celebration of the Holy Communion, we appoint, that the same tables shall from time to time be kept and repaired in sufficient and seemly manner, and covered in time of Divine Service with a carpet of silk or other decent stuff, thought meet by the ordinary of the place, if any question be made of it, and with a fair linen cloth at the time of the ministration, as becometh that table, and so stand, saving when the said Holy Communion is to be administered: at which time the same shall be placed in so good sort within the church or chancel, as thereby the minister may be more conveniently heard of the communicants in his prayer and ministration, and the communicants also more conveniently, and in more number, may communicate with the said minister; and that the Ten Commandments be set up on the east end of every church and chapel, where the people may best see and read the same, and other chosen sentences written upon the walls of

the said churches and chapels, in places convenient; and likewise that a convenient seat be made for the minister to read service in. All these to be done at the charge of the parish.

83. *A Pulpit to be provided in every Church.*

The churchwardens or questmen, at the common charge of the parishioners in every church, shall provide a comely and decent pulpit, to be set in a convenient place within the same, by the discretion of the ordinary of the place, if any question do arise, and to be there seemly kept for the preaching of God's Word.

84. *A Chest for Alms in every Church.*

The churchwardens shall provide and have, within three months after the publishing of these constitutions, a strong chest, with a hole in the upper part thereof, to be provided at the charge of the parish (if there be none such already provided), having three keys; of which one shall remain in the custody of the parson, vicar, or curate, and the other two in the custody of the churchwardens for the time being: which chest they shall set and fasten in the most convenient place, to the intent the parishioners may put into it their alms for their poor neighbours. And the parson, vicar, or curate shall diligently, from time to time, and especially when men make their testaments, call upon, exhort, and move their neighbours to confer and give, as they may well spare, to the said chest; declaring unto them, that whereas heretofore they have been diligent to bestow much substance otherwise than God commanded, upon superstitious uses, now they ought at this time to be much more ready to help the poor and needy, knowing that to relieve the poor is a sacrifice which pleaseth God; and that also whatsoever is given for their comfort is given to Christ himself, and is so accepted of Him, that He will mercifully reward the same. The which alms and devotion of the people, the keepers of the keys shall yearly, quarterly, or oftener (as need requireth), take out of the chest, and distribute the same in the presence of most of the parish, or six of the chief of them, to be truly and faithfully delivered to their most poor and needy neighbours.

85. *Churches to be kept in sufficient Reparations.*

The churchwardens or questmen shall take care and provide that the churches be well and sufficiently repaired, and so from

time to time kept and maintained, that the windows be well glazed, and that the floors be kept paved, plain, and even, and all things there in such an orderly and decent sort, without dust, or anything that may be either noisome or unseemly, as best becometh the House of God, and is prescribed in an homily to that effect. The like care they shall take, that the churchyards be well and sufficiently repaired, fenced, and maintained with walls, rails, or pales, as have been in each place accustomed, at their charges unto whom by law the same appertaineth: but especially they shall see that in every meeting of the congregation peace be well kept: and that all persons excommunicated, and so denounced, be kept out of the Church.

86. *Churches to be surveyed, and the Decays certified to the High Commissioners.*

Every dean, dean and chapter, archdeacon, and others which have authority to hold ecclesiastical visitations by composition, law, or prescription, shall survey the churches of his or their jurisdiction once in every three years in his own person, or cause the same to be done; and shall from time to time within the said three years certify the high commissioners for causes ecclesiastical, every year, of such defects in any the said churches, as he or they do find to remain unrepaired, and the names and surnames of the parties faulty therein. Upon which certificate, we desire that the said high commissioners will *ex officio mero* send for such parties, and compel them to obey the just and lawful decrees of such ecclesiastical ordinaries, making such certificates.

87. *A Terrier of Glebe-lands and other Possessions belonging to Churches.*

We ordain, that the archbishops, and all bishops within their several dioceses, shall procure (as much as in them lieth) that a true note and terrier of all the glebes, lands, meadows, gardens, orchards, houses, stocks, implements, tenements, and portions of tithes lying out of their parishes (which belong to any parsonage, or vicarage, or rural prebend), be taken by the view of honest men in every parish, by the appointment of the bishop (whereof the minister to be one), and be laid up in the bishop's registry, there to be for a perpetual memory thereof.



88. *Churches not to be profaned.*

The churchwardens or questmen, and their assistants, shall suffer no plays, feasts, banquets, suppers, church-ales, drinkings, temporal courts or leets, lay-juries, musters, or any other profane usage, to be kept in the church, chapel, or churchyard, neither the bells to be rung superstitiously upon holydays or eves abrogated by the Book of Common Prayer, nor at any other times, without good cause to be allowed by the minister of the place, and by themselves.

CHURCHWARDENS OR QUESTMEN, AND SIDEMEN OR ASSISTANTS.

89. *The Choice of Churchwardens, and their Account.*

All churchwardens or questmen in every parish shall be chosen by the joint consent of the minister and the parishioners, if it may be; but if they cannot agree upon such a choice, then the minister shall choose one, and the parishioners another: and without such a joint or several choice, none shall take upon them to be churchwardens: neither shall they continue any longer than one year in that office, except perhaps they be chosen again in like manner. And all churchwardens at the end of their year, or within a month after at the most, shall before the minister and the parishioners give up a just account of such money as they have received, and also what particularly they have bestowed in reparations, and otherwise, for the use of the church. And last of all, going out of their office, they shall truly deliver up to the parishioners whatsoever money or other things of right belonging to the church or parish which remaineth in their hands, that it may be delivered over by them to the next churchwardens by bill indented.

90. *The Choice of Sidemen, and their Joint Office with Churchwardens.*

The churchwardens or questmen of every parish, and two or three or more discreet persons in every parish, to be chosen for sidemen or assistants by the minister and parishioners, if they can agree (otherwise to be appointed by the ordinary of the diocese), shall diligently see that all the parishioners duly resort to their church upon all Sundays and holidays, and there continue the

whole time of Divine Service; and none to walk or to stand idle or talking in the church, or in the churchyard, or the church-porch, during that time. And all such as shall be found slack or negligent in resorting to the church (having no great or urgent cause of absence), they shall earnestly call upon them; and after due monition (if they amend not), they shall present them to the ordinary of the place. The choice of which persons—viz., churchwardens or questmen, sidemen or assistants, shall be yearly made in Easter-week.

PARISH CLERKS.

91. *Parish Clerks to be chosen by the Minister.*

No parish clerk upon any vacation shall be chosen, within the city of London, or elsewhere within the province of Canterbury, but by the parson or vicar; or, where there is no parson or vicar, by the minister of that place for the time being: which choice shall be signified by the said minister, vicar, or parson, to the parishioners the next Sunday following, in the time of Divine Service. And the said clerk shall be of twenty years of age at the least, and known to the said parson, vicar, or minister, to be of honest conversation, and sufficient for his reading, writing, and also for his competent skill in singing, if it may be. And the said clerks so chosen shall have and receive their ancient wages, without fraud or diminution, either at the hands of the churchwardens, at such times as hath been accustomed, or by their own collection, according to the most ancient custom of every parish.

ECCLESIASTICAL COURTS BELONGING TO THE ARCHBISHOP'S JURISDICTION.

92. *None to be cited into divers Courts for Probate of the same Will.*

Forasmuch as many heretofore have been, by apparitors both of inferior courts, and of the courts of the archbishop's prerogative, much distracted, and diversely called and summoned for probate of wills, or to take administrations of the goods of persons dying intestate, and are thereby vexed and grieved with many causeless and unnecessary troubles, molestations, and expenses; we constitute



and appoint, that all chancellors, commissaries, or officials, or any other exercising ecclesiastical jurisdiction whatsoever, shall at the first charge with an oath all persons called or voluntarily appearing before them for the probate of any will, or the administration of any goods, whether they know, or (moved by any special inducement) do firmly believe, that the party deceased, whose testament or goods depend now in question, had at the time of his or her death any goods or good debts in any other diocese or dioceses, or peculiar jurisdiction within that province, than in that wherein the said party died, amounting to the value of five pounds. And if the said person cited, or voluntarily appearing before him, shall upon his oath affirm, that he knoweth, or (as aforesaid) firmly believeth, that the said party deceased had goods or good debts in any other diocese or dioceses, or peculiar jurisdiction within the said province, to the value aforesaid, and particularly specify and declare the same; then shall he presently dismiss him, not presuming to intermeddle with the probate of the said will, or to grant administration of the goods of the party so dying intestate; neither shall he require or exact any other charges of the said parties, more than such only as are due for the citation, and other process had and used against the said parties upon their further contumacy; but shall openly and plainly declare and profess, that the said cause belongeth to the prerogative of the archbishop of that province; willing and admonishing the party to prove the said will, or require administration of the said goods, in the court of the said prerogative, and to exhibit before him the said judge the probate or administration under the seal of the prerogative, within forty days next following. And if any chancellor, commissary, official, or other exercising ecclesiastical jurisdiction whatsoever, or any their registrar, shall offend herein, let him be *ipso facto* suspended from the execution of his office, not to be absolved or released, until he have restored to the party all expenses by him laid out contrary to the tenor of the premises; and every such probate of any testament, or administration of goods so granted, shall be held void and frustrate to all effects of the law whatsoever.

Furthermore, we charge and enjoin, that the registrar of every inferior judge do, without all difficulty or delay, certify and inform the apparitor of the prerogative court, repairing unto him once a month, and no oftener, what executors or administrators have been by his said judge, for the incompetency of his own jurisdiction, dismissed to the said prerogative court within the month next

before, under pain of a month's suspension from the exercise of his office for every default therein. Provided, that this canon, or anything therein contained, be not prejudicial to any composition between the archbishop and any bishop or other ordinary, nor to any inferior judge that shall grant any probate of testament, or administration of goods, to any party that shall voluntarily desire it, both out of the said inferior court, and also out of the prerogative. Provided likewise, that if any man die *in itinere*, the goods that he hath about him at that present shall not cause his testament or administration to be liable unto the prerogative court.

93. *The Rate of* Bona notabilia *liable to the Prerogative Court.*

Furthermore, we decree and ordain, that no judge of the archbishop's prerogative shall henceforward cite, or cause to be cited, *ex officio*, any person whatsoever to any of the aforesaid intents, unless he have knowledge that the party deceased was at the time of his death possessed of goods and chattels in some other diocese or dioceses, or peculiar jurisdiction within that province, than in that wherein he died, amounting to the value of five pounds at the least; decreeing and declaring, that whoso hath not goods in divers dioceses to the said sum or value shall not be accounted to have *bona notabilia*. Always provided, that this clause, here and in the former constitution mentioned, shall not prejudice those dioceses, where by composition or custom *bona notabilia* are rated at a greater sum. And if any judge of the prerogative court, or any his surrogate, or his registrar or apparitor, shall cite, or cause any person to be cited into his court, contrary to the tenor of the premises, he shall restore to the party so cited all his costs and charges, and the acts and proceedings in that behalf shall be held void and frustrate. Which expenses, if the said judge, or registrar, or apparitor, shall refuse accordingly to pay, he shall be suspended from the exercise of his office, until he yield to the performance thereof.

94. *None to be cited into the Arches or Audience but Dwellers within the Archbishop's Diocese, or Peculiars.*

No dean of the arches, nor official of the archbishop's consistory, nor any judge of the audience, shall henceforward in his own name, or in the name of the archbishop, either *ex officio*, or at the

instance of any party, originally cite, summon, or any way compel, or procure to be cited, summoned, or compelled, any person which dwelleth not within the particular diocese or peculiar of the said archbishop, to appear before him or any of them, for any cause or matter whatsoever belonging to ecclesiastical cognisance, without the licence of the diocesan first had and obtained in that behalf, other than in such particular cases only as are expressly excepted and reserved in and by a statute *anno* 23 *H. VIII. cap.* 9. And if any of the said judges shall offend herein, he shall for every such offence be suspended from the exercise of his office for the space of three whole months.

95. *The Restraint of Double Quarrels.*

Albeit by former constitutions of the Church of England, every bishop hath had two months' space to enquire and inform himself of the sufficiency and qualities of every minister, after he hath been presented unto him to be instituted into any benefice; yet, for the avoiding of some inconveniences, we do now abridge and reduce the said two months unto eight-and-twenty days only. In respect of which abridgment we do ordain and appoint, that no double quarrel shall hereafter be granted out of any of the archbishop's courts at the suit of any minister whosoever, except he shall first take his personal oath, that the said eight-and-twenty days at the least are expired, after he first tendered his presentation to the bishop, and that he refused to grant him institution thereupon; or shall enter bonds with sufficient sureties to prove the same to be true; under pain of suspension of the granter thereof from the execution of his office for half a year *toties quoties* (to be denounced by the said archbishop), and nullity of the double quarrel aforesaid, so unduly procured, to all intents and purposes whatsoever. Always provided, that within the said eight-and-twenty days the bishop shall not institute any other to the prejudice of the said party before presented, *sub pœna nullitatis.*

96. *Inhibitions not to be granted without the Subscription of an Advocate.*

That the jurisdictions of bishops may be preserved (as near as may be) entire and free from prejudice, and that for the behoof of the subjects of this land better provision be made, that henceforward they be not grieved with frivolous and wrongful suits and

molestations; it is ordained and provided, that no inhibition shall be granted out of any court belonging to the Archbishop of Canterbury, at the instance of any party, unless it be subscribed by an advocate practising in the said court: which the said advocate shall do freely, not taking any fee for the same, except the party prosecuting the suit do voluntarily bestow some gratuity upon him for his counsel and advice in the said cause. The like course shall be used in granting forth any inhibition, at the instance of any party, by the bishop or his chancellor, against the archdeacon, or any other person exercising ecclesiastical jurisdiction: and if in the court or consistory of any bishop there be no advocate at all, then shall the subscription of a proctor practising in the same court be held sufficient.

97. *Inhibitions not to be granted until the Appeal be exhibited to the Judge.*

It is further ordered and decreed, that henceforward no inhibition be granted by occasion of any interlocutory decree, or in any cause of correction whatsoever, except under the form aforesaid: and moreover, that before the going-out of any such inhibition, the appeal itself, or a copy thereof (avouched by oath to be just and true), be exhibited to the judge, or his lawful surrogate, whereby he may be fully informed both of the quality of the crime, and of the cause of the grievance, before the granting-forth of the said inhibition. And every appellant, or his lawful proctor, shall, before the obtaining of any such inhibition, show and exhibit to the judge, or his surrogate, in writing, a true copy of those acts wherewith he complaineth himself to be aggrieved, and from which he appealeth; or shall take a corporal oath, that he hath performed his diligence and true endeavour for the obtaining of the same, and could not obtain it at the hands of the registrar in the country, or his deputy, tendering him his fee. And if any judge or registrar shall either procure or permit any inhibition to be sealed, so as is said, contrary to the form and limitation above specified, let him be suspended from the execution of his office for the space of three months: if any proctor, or other person whatsoever by his appointment, shall offend in any of the premises, either by making or sending out any inhibition, contrary to the tenor of the said premises, let him be removed from the exercise of his office for the space of a whole year, without hope of release or restoring.

98. *Inhibitions not to be granted to factious Appellants, unless they first subscribe.*

Forasmuch as they who break the laws cannot in reason claim any benefit or protection by the same; we decree and appoint, that after any judge ecclesiastical hath proceeded judicially against obstinate and factious persons, and contemners of ceremonies, for not observing the rites and orders of the Church of England, or for contempt of public prayer, no judge, *ad quem*, shall admit or allow any his or their appeals, unless, he having first seen the original appeal, the party appellant do first personally promise and avow, that he will faithfully keep and observe all the rites and ceremonies of the Church of England, as also the prescript form of Common Prayer; and do likewise subscribe to the three articles formerly by us specified and declared.

99. *None to Marry within the Degrees prohibited.*

No person shall marry within the degrees prohibited by the laws of God, and expressed in a table set forth by authority in the year of Our Lord God 1563.[1] And all marriages so made and contracted shall be adjudged incestuous and unlawful, and consequently shall be dissolved as void from the beginning, and the parties so married shall by course of law be separated. And the aforesaid table shall be in every church publicly set up and fixed at the charge of the parish.

100. *None to marry under Twenty-one Years without their Parents' Consent.*

No children under the age of one-and-twenty years complete shall contract themselves, or marry, without the consent of their parent, or of their guardians and governors, if their parents be deceased.

101. *By whom Licences to marry without Banns shall be granted, and to what sort of Persons.*

No faculty or licence shall be henceforth granted for solemnization of matrimony betwixt any parties, without thrice open publication of the banns, according to the Book of Common Prayer, by any person exercising any ecclesiastical jurisdiction, or claiming

[1] [For this Table see page 436.]



any privileges in the right of their churches; but the same shall be granted only by such as have episcopal authority, or the commissary for faculties, vicars-general of the archbishops and bishops, *sede plena*; or, *sede vacante*, the guardian of the spiritualities, or ordinaries exercising of right episcopal jurisdiction in their several jurisdictions respectively, and unto such persons only as be of good state and quality, and that upon good caution and security taken.

102. *Security to be taken at the granting of such Licences, and under what Conditions.*

The security mentioned shall contain these conditions: First, that at the time of the granting every such licence, there is not any impediment of precontract, consanguinity, affinity, or other lawful cause, to hinder the said marriage: Secondly, that there is not any controversy or suit depending in any court before any ecclesiastical judge, touching any contract or marriage of either of the said parties with any other: Thirdly, that they have obtained thereunto the express consent of their parents (if they be living), or otherwise of their guardians or governors: Lastly, that they shall celebrate the said matrimony publicly in the parish church or chapel where one of them dwelleth, and in no other place, and that between the hours of eight and twelve in the forenoon.

103. *Oaths to be taken for the Conditions.*

For the avoiding of all fraud and collusion in the obtaining of such licences and dispensations, we further constitute and appoint, that before any licence for the celebration of matrimony without publication of banns be had or granted, it shall appear to the judge by the oaths of two sufficient witnesses, one of them to be known either to the judge himself, or to some other person of good reputation then present, and known likewise to the said judge, that the express consent of the parents or parent (if one be dead), or guardians or guardian of the parties, is thereunto had and obtained. And furthermore, that one of the parties personally swear, that he believeth there is no let or impediment of precontract, kindred, or alliance, or of any other lawful cause whatsoever, nor any suit commenced in any ecclesiastical court, to bar or hinder the proceeding of the said matrimony, according to the tenure of the aforesaid licence.



104. *An Exception for those that are in Widowhood.*

If both the parties which are to marry being in widowhood do seek a faculty for the forbearing of banns, then the clauses before-mentioned, requiring the parents' consents, may be omitted; but the parishes where they dwell, both shall be expressed in the licence, as also the parish named where the marriage shall be celebrated. And if any commissary for faculties, vicars-general, or other the said ordinaries, shall offend in the premises, or any part thereof, he shall, for every time so offending, be suspended from the execution of his office for the space of six months: and every such licence or dispensation shall be held void to all effects and purposes, as if there had never been any such granted; and the parties marrying by virtue thereof shall be subject to the punishments which are appointed for clandestine marriages.

105. *No Sentence for Divorce to be given upon the sole Confession of the Parties.*

Forasmuch as matrimonial causes have been always reckoned and reputed among the weightiest, and therefore require the greater caution, when they come to be handled and debated in judgment, especially in causes wherein matrimony, having been in the church duly solemnized, is required, upon any suggestion or pretext whatsoever, to be dissolved or annulled: we do straitly charge and enjoin, that in all proceedings to divorce, and nullities of matrimony, good circumspection and advice be used, and that the truth may (as far as is possible) be sifted out by the deposition of witnesses, and other lawful proofs and evictions; and that credit be not given to the sole confession of the parties themselves, howsoever taken upon oath, either within or without the court.

106. *No Sentence for Divorce to be given but in open Court.*

No sentence shall be given either for separation *a thoro et mensa*, or for annulling of pretended matrimony, but in open court, and in the seat of justice; and that with the knowledge and consent either of the archbishop within his province, or of the bishop within his diocese, or of the dean of the arches, the judge of the audience of Canterbury, or of the vicars-general, or other principal officials, or, *sede vacante*, of the guardians of the spiritualities,

or other ordinaries to whom of right it appertaineth, in their several jurisdictions and courts, and concerning them only that are then dwelling under their jurisdictions.

107. *In all Sentences for Divorce, Bond to be taken for not Marrying during each other's Life.*

In all sentences pronounced only for divorce and separation *a thoro et mensa*, there shall be a caution and restraint inserted in the act of the said sentence, that the parties so separated shall live chastely and continently; neither shall they, during each other's life, contract matrimony with any other person. And, for the better observation of this last clause, the said sentence of divorce shall not be pronounced, until the party or parties requiring the same have given good and sufficient caution and security into the court, that they will not any way break or transgress the said restraint or prohibition.

108. *The Penalty for Judges offending in the premises.*

And if any judge, giving sentence of divorce or separation, shall not fully keep and observe the premises, he shall be, by the archbishop of the province, or by the bishop of the diocese, suspended from the exercise of his office for the space of a whole year; and the sentence of separation, so given contrary to the form aforesaid, shall be held void to all intents and purposes of the law, as if it had not at all been given or pronounced.

ECCLESIASTICAL COURTS BELONGING TO THE JURISDICTION OF BISHOPS AND ARCHDEACONS, AND THE PROCEEDINGS IN THEM.

109. *Notorious Crimes and Scandals to be certified into Ecclesiastical Courts by Presentments.*

If any offend their brethren, either by adultery, whoredom, incest, or drunkenness, or by swearing, ribaldry, usury, and any other uncleanness and wickedness of life, the churchwardens, or questmen, and sidemen, in their next presentments to their ordinaries, shall faithfully present all and every of the said



offenders, to the intent that they, and every of them, may be punished by the severity of the laws, according to their deserts; and such notorious offenders shall not be admitted to the Holy Communion till they be reformed.

110. *Schismatics to be presented.*

If the churchwardens, or questmen, or assistants, do or shall know any man within their parish, or elsewhere, that is a hinderer of the Word of God to be read or sincerely preached, or of the execution of these our constitutions, or a fautor of any usurped or foreign power, by the laws of this realm justly rejected and taken away, or a defender of popish and erroneous doctrine; they shall detect and present the same to the bishop of the diocese, or ordinary of the place, to be censured and punished according to such ecclesiastical laws as are prescribed in that behalf.

111. *Disturbers of Divine Service to be presented.*

In all visitations of bishops and archdeacons, the churchwardens, or questmen, and sidemen, shall truly and personally present the names of all those which behave themselves rudely and disorderly in the church, or which by untimely ringing of bells, by walking, talking, or other noise, shall hinder the minister or preacher.

112. *Non-Communicants at Easter to be presented.*

The minister, churchwardens, questmen, and assistants of every parish church and chapel, shall yearly, within forty days after Easter, exhibit to the bishop or his chancellor the names and surnames of all the parishioners, as well men as women, which being of the age of sixteen years received not the Communion at Easter before.

113. *Ministers may present.*

Because it often cometh to pass, that the churchwardens, sidemen, questmen, and such other persons of the laity as are to take care for the suppressing of sin and wickedness in their several parishes, as much as in them lieth, by admonition, reprehension, and denunciation to their ordinaries, do forbear to discharge their duties therein, either through fear of their superiors, or through negligence, more than were fit, the licentiousness of these times

considered; we ordain, that hereafter every parson and vicar, or, in the lawful absence of any parson or vicar, then their curates and substitutes, may join in every presentment with the said churchwardens, sidemen, and the rest above mentioned, at the times hereafter limited, if they, the said churchwardens and the rest, will present such enormities as are apparent in the parish; or if they will not, then every such parson and vicar, or, in their absence as aforesaid, their curates may themselves present to their ordinaries at such times, and when else they think it meet, all such crimes as they have in charge, or otherwise, as by them (being the persons that should have the chief care for the suppressing of sin and impiety in their parishes) shall be thought to require due reformation. Provided always, that if any man confess his secret and hidden sins to the minister, for the unburdening of his conscience, and to receive spiritual consolation and ease of mind from him; we do not any way bind the said minister by this our constitution, but do straitly charge and admonish him, that he do not at any time reveal and make known to any person whatsoever any crime or offence so committed to his trust and secrecy (except they be such crimes as by the laws of this realm his own life may be called into question for concealing the same), under pain of irregularity.

114. *Ministers shall present Recusants.*

Every parson, vicar, or curate shall carefully inform themselves, every year hereafter, how many popish recusants, men, women, and children above the age of thirteen years, and how many being popishly given (who, though they come to the church, yet do refuse to receive the Communion) are inhabitants, or make their abode, either as sojourners or common guests, in any of their several parishes; and shall set down their true names in writing, (if they can learn them), or otherwise such names as for the time they carry, distinguishing the absolute recusants from half recusants; and the same, so far as they know or believe, so distinguished and set down under their hands, shall truly present to their ordinaries before the Feast of the Nativity next ensuing, under pain of suspension to be inflicted upon them by their said ordinaries; and so every year hereafter, upon the like pain, before the Feast of St. John Baptist. Also we ordain, that all such ordinaries, chancellors, commissaries, archdeacons, officials, and all other ecclesiastical officers, to whom the said presentments shall be



exhibited, shall likewise within one month after the receipt of the same, under pain of suspension by the bishop from the execution of their offices for the space of half a year, as often as they shall offend therein, deliver them, or cause them to be delivered, to the bishop respectively; who shall also exhibit them to the archbishop within six weeks, and the archbishop to his Majesty within other six weeks after he hath received the said presentments.

115. *Ministers and Churchwardens not to be sued for presenting.*

Whereas for the reformation of criminous persons and disorders in every parish, the churchwardens, questmen, sidemen, and such other church officers are sworn, and the minister charged to present as well the crimes and disordors committed by the said criminous persons, as also the common fame which is spread abroad of them, whereby they are often maligned, and sometimes troubled by the said delinquents, or their friends; we do admonish and exhort all judges, both ecclesiastical and temporal, as they regard and reverence the fearful judgment-seat of the Highest Judge, that they admit not in any of their courts any complaint, plea, suit, or suits against any such churchwardens, questmen, sidemen, or other church officers, for making any such presentments, nor against any minister for any presentment that he shall make; all the said presentments tending to the restraint of shameless impiety, and considering that the rules both of charity and government do presume, that they did nothing therein of malice, but for the discharge of their consciences.

116. *Churchwardens not bound to present oftener than Twice a Year.*

No churchwardens, questmen, or sidemen of any parish shall be enforced to exhibit their presentments to any having ecclesiastical jurisdiction above once in every year where it hath been no oftener used, nor above twice in any diocese whatsoever, except it be at the bishop's visitation. For the which presentments of every parish church or chapel, the registrar of any court, where they are to be exhibited, shall not receive in one year above fourpence, under pain, for every offence therein, of suspension from the execution of his office for the space of a month, *toties quoties*. Provided always, that, as good occasion shall require, it shall be

lawful for every minister, churchwardens, and sidemen to present offenders as oft as they shall think meet; and likewise for any godly-disposed person, or for any ecclesiastical judge, upon knowledge, or notice given unto him or them of any enormous crime within his jurisdiction, to move the minister, churchwardens, or sidemen, as they tender the glory of God and reformation of sin, to present the same, if they shall find sufficient cause to induce them thereunto, that it may be in due time punished and reformed. Provided, that for these voluntary presentments there be no fee required or taken of them, under the pain aforesaid.

117. *Churchwardens not to be troubled for not presenting oftener than Twice a Year.*

No churchwardens, questmen, or sidemen shall be called or cited, but only at the said time or times before limited, to appear before any ecclesiastical judge whosoever, for refusing at other times to present any faults committed in their parishes, and punishable by ecclesiastical laws. Neither shall they, nor any of them, after their presentments exhibited at any of those times, be any further troubled for the same, except upon manifest and evident proof it may appear that they did then willingly and wittingly omit to present some such public crime or crimes as they knew to be committed, or could not be ignorant that there was then a public fame of them; or unless there be very just cause to call them for the explanation of their former presentments. In which case of wilful omission, their ordinaries shall proceed against them in such sort, as in causes of wilful perjury in a court ecclesiastical it is already by law provided.

118. *The old Churchwardens to make their Presentments before the new be sworn.*

The office of all churchwardens and sidemen shall be reputed ever hereafter to continue until the new churchwardens that shall succeed them be sworn, which shall be the first week after Easter, or some week following, according to the direction of the ordinary. Which time so appointed shall always be one of the two times in every year when the minister and churchwardens and sidemen of every parish shall exhibit to their several ordinaries the presentments of such enormities as have happened in their parishes since



their last presentments. And this duty they shall perform before the newly-chosen churchwardens and sidemen be sworn, and shall not be suffered to pass over the said presentments to those that are newly come into office, and are by intendment ignorant of such crimes; under pain of those censures which are appointed for the reformation of such dalliers and dispensers with their own consciences and oaths.

119. *Convenient Time to be assigned for framing Presentments.*

For the avoiding of such inconveniences as heretofore have happened by the hasty making of bills of presentments upon the days of the visitation and synods, it is ordered, that always hereafter every chancellor, archdeacon, commissary, and official, and every other person having ecclesiastical jurisdiction, at the ordinary time when the churchwardens are sworn; and the archbishop and bishops, when he or they do summon their visitation, shall deliver, or cause to be delivered, to the churchwardens, questmen, and sidemen of every parish, or to some of them, such books of articles as they, or any of them, shall require, for the year following, the said churchwardens, questmen, and sidemen to ground their presentments upon, at such times as they are to exhibit them. In which book shall be contained the form of the oath, which must be taken immediately before every such presentment; to the intent that, having beforehand time sufficient, not only to peruse and consider what their said oath shall be, but the articles also whereupon they are to ground their presentments, they may frame them at home both advisedly and truly, to the discharge of their own consciences, after they are sworn, as becometh honest and godly men.

120. *None to be cited into Ecclesiastical Courts by Process of Quorum Nomina.*

No bishop, chancellor, archdeacon, official, or other ecclesiastical judge, shall suffer any general processes of *Quorum Nomina* to be sent out of his court; except the names of all such as thereby are to be cited shall be first expressly entered by the hand of the registrar, or his deputy, under the said processes, and the said processes and names be first subscribed by the judge, or his deputy, and his seal thereto affixed.

121. *None to be cited into several Courts for one Crime.*

In places where the bishop and archdeacon do by prescription or composition visit at several times in one and the same year, lest for one and the selfsame fault any of his Majesty's subjects should be challenged and molested in divers ecclesiastical courts; we order and appoint, that every archdeacon, or his official, within one month after the visitation ended that year, and the presentments received, shall certify under his hand and seal to the bishop, or his chancellor, the names and crimes of all such as are detected and presented in his said visitation, to the end the chancellor shall thenceforth forbear to convent any person for any crime or cause so detected or presented to the archdeacon. And the chancellor within the like time after the bishop's visitation ended, and presentments received, shall under his hand and seal signify to the archdeacon, or his official, the names and crimes of all such persons which shall be detected or presented unto him in that visitation, to the same intent as is aforesaid. And if these officers shall not certify each other, as is here prescribed, or after such certificate shall intermeddle with the crimes or persons detected and presented in each other's visitation; then every of them so offending shall be suspended from all exercise of his jurisdiction by the bishop of the diocese, until he shall repay the costs and expenses which the parties grieved have been at by that vexation.

122. *No Sentence of Deprivation or Deposition to be pronounced against a Minister but by the Bishop.*

When any minister is complained of in any ecclesiastical court belonging to any bishop of his province, for any crime, the chancellor, commissary, official, or any other having ecclesiastical jurisdiction, to whom it shall appertain, shall expedite the cause by processes and other proceedings against him: and upon contumacy, for not appearing, shall first suspend him; and afterward, his contumacy continuing, excommunicate him. But if he appear, and submit himself to the course of law, then the matter being ready for sentence, and the merits of his offence exacting by law either deprivation from his living, or deposition from the ministry, no such sentence shall be pronounced by any person whosoever, but only by the bishop, with the assistance of his chancellor, the dean (if they may conveniently be had), and some of the pre-



bendaries (if the court be kept near the cathedral church), or of the archdeacon, if he may be had conveniently, and two other at the least grave ministers and preachers, to be called by the bishop, when the court is kept in other places.

123. *No Act to be sped but in open Court.*

No chancellor, commissary, archdeacon, official, or any other person using ecclesiastical jurisdiction whosoever, shall speed any judicial act, either of contentious or voluntary jurisdiction, except he have the ordinary registrar of that court, or his lawful deputy: or if he or they will not, or cannot be present, then such persons as by law are allowed in that behalf to write or speed the same, under pain of suspension *ipso facto*.

124. *No Court to have more than one Seal.*

No chancellor, commissary, archdeacon, official, or any other exercising ecclesiastical jurisdiction, shall without the bishop's consent have any more seals than one, for the sealing of all matters incident to his office: which seal shall always be kept either by himself, or by his lawful substitute exercising jurisdiction for him, and remaining within the jurisdiction of the said judge, or in the city or principal town of the county. This seal shall contain the title of that jurisdiction which every of the said judges or their deputies do execute.

125. *Convenient Places to be chosen for the keeping of Courts.*

All chancellors, commissaries, archdeacons, officials, and all other exercising ecclesiastical jurisdiction, shall appoint such meet places for the keeping of their courts, by the assignment or approbation of the bishop of the diocese, as shall be convenient for entertainment of those that are to make their appearance there, and most indifferent for their travel. And likewise they shall keep and end their courts in such convenient time, as every man may return homewards in as due season as may be.

126. *Peculiar and inferior Courts to exhibit the original Copies of Wills into the Bishop's Registry.*

Whereas deans, archdeacons, prebendaries, parsons, vicars, and others exercising ecclesiastical jurisdiction, claim liberty to prove

the last wills and testaments of persons deceased within their several jurisdictions, having no known or certain registrars, nor public place to keep their records in; by reason whereof many wills, rights, and legacies, upon the death or change of such persons, and their private notaries, miscarry and cannot be found, to the great prejudice of his Majesty's subjects; we therefore order and enjoin, that all such possessors and exercisers of peculiar jurisdiction shall once in every year exhibit into the public registry of the bishop of the diocese, or of the dean and chapter under whose jurisdiction the said peculiars are, every original testament of every person in that time deceased, and by them proved in their several peculiar jurisdictions, or a true copy of every such testament, examined, subscribed, and sealed by the peculiar judge and his notary. Otherwise, if any of them fail so to do, the bishop of the diocese, or dean and chapter, unto whom the said jurisdictions do respectively belong, shall suspend the said parties, and every of them, from the exercise of all such peculiar jurisdiction, until they have performed this our constitution.

JUDGES ECCLESIASTICAL AND THEIR SURROGATES.

127. *The Quality and Oath of Judges.*

No man shall hereafter be admitted a chancellor, commissary, or official, to exercise any ecclesiastical jurisdiction, except he be of the full age of six-and-twenty years at the least, and one that is learned in the civil and ecclesiastical laws, and is at the least a master of arts, or bachelor of law, and is reasonably well practised in the course thereof, as likewise well affected and zealously bent to religion, touching whose life and manners no evil example is had; and except, before he enter into or execute any such office, he shall take the oath of the King's supremacy in the presence of the bishop, or in the open court, and shall subscribe to the Articles of Religion agreed upon in the convocation in the year one thousand five hundred sixty and two, and shall also swear that he will, to the uttermost of his understanding, deal uprightly and justly in his office, without respect or favour of reward—the said oaths and subscription to be recorded by a registrar then present. And likewise all chancellors, commissaries, officials, registrars, and all other that do now possess or execute any places of ecclesiastical juris-



diction, or service, shall before Christmas next, in the presence of the archbishop or bishop, or in open court, under whom or where they exercise their offices, take the same oaths, and subscribe, as before is said; or, upon refusal so to do, shall be suspended from the execution of their offices, until they shall take the said oaths, and subscribe as aforesaid.

128. *The Quality of Surrogates.*

No chancellor, commissary, archdeacon, official, or any other person using ecclesiastical jurisdiction, shall at any time substitute in their absence any to keep any court for them, except he be either a grave minister and a graduate, or a licensed public preacher, and a beneficed man near the place where the courts are kept, or a bachelor of law, or a master of arts at least, who hath some skill in the civil and ecclesiastical law, and is a favourer of true religion, and a man of modest and honest conversation; under pain of suspension, for every time that they offend therein, from the execution of their offices, for the space of three months, *toties quoties*; and he likewise that is deputed, being not qualified as is before expressed, and yet shall presume to be a substitute to any judge, and shall keep any court as is aforesaid, shall undergo the same censure in manner and form as is before expressed.

PROCTORS.

129. *Proctors not to retain Causes without the lawful Assignment of the Parties.*

None shall procure in any cause whatsoever, unless he be thereunto constituted and appointed by the party himself, either before the judge, and by act in court, or unless, in the beginning of the suit, he be by a true and sufficient proxy thereunto warranted and enabled. We call that proxy sufficient which is strengthened and confirmed by some authentical seal, the party's approbation, or at least his ratification therewithal concurring. All which proxies shall be forthwith by the said proctors exhibited into the court, and be safely kept and preserved by the registrar in the public registry of the said court. And if any registrar or proctor shall offend herein, he shall be secluded from the exercise of his office for the space of two months, without hope of release or restoring.

130. *Proctors not to retain Causes without the Counsel of an Advocate.*

For lessening and abridging the multitude of suits and contentions, as also for preventing the complaints of suitors in courts ecclesiastical, who many times are overthrown by the oversight and negligence, or by the ignorance and insufficiency of proctors; and likewise for the furtherance and increase of learning, and the advancement of civil and canon law, following the laudable customs heretofore observed in the courts pertaining to the Archbishop of Canterbury; we will and ordain, that no proctor exercising in any of them shall entertain any cause whatsoever, and keep and retain the same for two court-days, without the counsel and advice of an advocate, under pain of a year's suspension from his practice; neither shall the judge have power to release or mitigate the said penalty, without express mandate and authority from the archbishop aforesaid.

131. *Proctors not to conclude in any Cause without the Knowledge of an Advocate.*

No judge in any of the said courts of the archbishop shall admit any libel, or any other matter, without the advice of an advocate admitted to practise in the same court, or without his subscription; neither shall any proctor conclude any cause depending without the knowledge of the advocate retained and feed in the cause: which if any proctor shall do, or procure to be done, or shall by any colour whatsoever defraud the advocate of his duty or fee, or shall be negligent in repairing to the advocate, and requiring his advice what course is to be taken in the cause, he shall be suspended from all practice for the space of six months without hope of being thereunto restored before the said term be fully complete.

132. *Proctors prohibited the Oath "In animam Domini sui."*

Forasmuch as in the probate of testaments and suits for administration of the goods of persons dying intestate, the oath usually taken by proctors of courts, "*In animam constituentis*," is found to be inconvenient; we do therefore decree and ordain, that every executor, or suitor for administration, shall personally repair to the judge in that behalf, or his surrogate, and in his own person



(and not by proctor) take the oath accustomed in these cases. But if by reason of sickness, or age, or any other just let or impediment, he be not able to make his personal appearance before the judge, it shall be lawful for the judge (there being faith first made by a credible person of the truth of his said hindrance or impediment) to grant a commission to some grave ecclesiastical person, abiding near the party aforesaid, whereby he shall give power and authority to the said ecclesiastical person, in his stead, to minister the accustomed oath abovementioned to the executor, or suitor for such administration, requiring his said substitute, that by a faithful and trusty messenger he certify the said judge truly and faithfully what he hath done therein. Lastly, we ordain and appoint, that no judge or registrar shall in anywise receive for the writing, drawing, or sealing of any such commission, above the sum of six shillings and eight pence; whereof one moiety to be for the judge, and the other for the registrar of the said court.

133. *Proctors not to be clamorous in Court*

Forasmuch as it is found by experience, that the loud and confused cries and clamours of proctors in the courts of the archbishop are not only troublesome and offensive to the judges and advocates, but also give occasion to the standers-by of contempt and calumny toward the court itself; that more respect may be had to the dignity of the judge than heretofore, and that causes may more easily and commodiously be handled and despatched: we charge and enjoin, that all proctors in the said courts do especially intend, that the acts be faithfully entered and set down by the registrar, according to the advice and direction of the advocate; that the said proctors refrain loud speech and babbling, and behave themselves quietly and modestly; and that, when either the judges or advocates, or any of them, shall happen to speak, they presently be silent, upon pain of silencing for two whole terms then immediately following every such offence of theirs. And if any of them shall the second time offend herein, and after due monition shall not reform himself, let him be for ever removed from his practice.

REGISTRARS.

134. *Abuses to be reformed in Registrars.*

If any registrar, or his deputy or substitute whatsoever, shall receive any certificate without the knowledge and consent of the judge of the court, or willingly omit to cause any person cited to appear upon any court-day, to be called; or unduly put off and defer the examination of witnesses to be examined by a day set and assigned by the judge; or do not obey and observe the judicial and lawful monition of the said judge; or omit to write, or cause to be written, such citations and decrees as are to be put in execution, and set forth before the next court-day; or shall not cause all testaments exhibited into his office to be registered within a convenient time; or shall set down or enact, as decreed by the judge, anything false, or conceited by himself, and not so ordered or decreed by the judge; or, in the transmission of processes to the judge *ad quem*, shall add or insert any falsehood or untruth, or omit anything therein, either by cunning, or by gross negligence; or in causes of instance, or promoted of office, shall receive any reward in favour of either party; or be of counsel directly or indirectly with either of the parties in suit; or in the execution of their office shall do aught else maliciously or fraudulently, whereby the said ecclesiastical judge, or his proceedings, may be slandered or defamed: we will and ordain, that the said registrar, or his deputy or substitute, offending in all or any of the premises, shall by the bishop of the diocese be suspended from the exercise of his office for the space of one, two, or three months, or more, according to the quality of his offence; and that the said bishop shall assign some other public notary to execute and discharge all things pertaining to his office, during the time of his said suspension.

135. *A certain Rate of Fees due to all Ecclesiastical Officers.*

No bishop, suffragan, chancellor, commissary, archdeacon, official, nor any other exercising ecclesiastical jurisdiction whatsoever, nor any registrar of any ecclesiastical courts, nor any minister belonging to any of the said offices or courts, shall hereafter, for any cause incident to their several offices, take or receive any other or greater fees than such as were certified to the Most Reverend Father in



God John, late Archbishop of Canterbury, in the year of Our Lord God one thousand five hundred ninety and seven, and were by him ratified and approved; under pain, that every such judge, officer, or minister offending herein, shall be suspended from the exercise of their several offices for the space of six months, for every such offence. Always provided, that if any question shall arise concerning the certainty of the said fees, or any of them, then those fees shall be held for lawful which the Archbishop of Canterbury for the time being shall under his hand approve, except the statutes of this realm before made do in any particular case express some other fees to be due. Provided furthermore, that no fee or money shall be received, either by the archbishop, or any bishop or suffragan, either directly or indirectly, for admitting of any into sacred orders; nor that any other person or persons under the said archbishop, bishop, or suffragan, shall for parchment, writing, wax, sealing, or any other respect thereunto appertaining, take above ten shillings, under such pains as are already by law prescribed.

136. *A Table of the Rates and Fees to be set up in Courts and Registries.*

We do likewise constitute and appoint, that the registrars belonging to every such ecclesiastical judge shall place two tables, containing the several rates and sums of all the said fees—one in the usual place or consistory where the court is kept, and the other in his registry; and both of them in such sort, as every man whom it concerneth may without difficulty come to the view and perusal thereof, and take a copy of them: the same tables to be set up before the Feast of the Nativity next ensuing. And if any registrar shall fail to place the said tables according to the tenor hereof, he shall be suspended from the execution of his office, until he cause the same to be accordingly done: and the said tables being once set up, if he shall at any time remove, or suffer the same to be removed, hidden, or any way hindered from sight, contrary to the true meaning of this constitution, he shall for every such offence be suspended from the exercise of his office for the space of six months.

137. *The whole Fees for shewing Letters of Orders and other Licences due but once in every Bishop's time.*

Forasmuch as the chief and principal cause and use of visitation is, that the bishop, archdeacon, or other assigned to visit, may get some good knowledge of the state, sufficiency, and ability of the clergy, and other persons whom they are to visit; we think it convenient, that every parson, vicar, curate, schoolmaster, or other person licensed whosoever, do at the bishop's first visitation, or at the next visitation after his admission, shew and exhibit unto him his letters of orders, institution, and induction, and all other his dispensations, licences, or faculties whatsoever, to be by the said bishop either allowed, or (if there be just cause) disallowed and rejected; and being by him approved, to be, as the custom is, signed by the registrar; and that the whole fees accustomed to be paid in the visitations in respect of the premises, be paid only once in the whole time of every bishop, and afterwards but half of the said accustomed fees in every other visitation during the said bishop's continuance.

APPARITORS.

138. *The Number of Apparitors restrained.*

Forasmuch as we are desirous to redress such abuses and aggrievances as are said to grow by somners or apparitors, we think it meet that the multitude of apparitors be (as much as is possible) abridged or restrained; wherefore we decree and ordain, that no bishop or archdeacon, or their vicars, or officials, or other inferior ordinaries, shall depute or have more apparitors to serve in their jurisdictions respectively, than either they or their predecessors were accustomed to have thirty years before the publishing of these our present constitutions. All which apparitors shall by themselves faithfully execute their offices; neither shall they, by any colour or pretence whatsoever, cause or suffer their mandates to be executed by any messengers or substitutes, unless it be upon some good cause, to be first known and approved by the ordinary of the place. Moreover, they shall not take upon them the office of promoters or informers for the court, neither shall they exact more or greater fees than are in these our constitutions formerly prescribed. And if either the number of the apparitors deputed shall exceed the



aforesaid limitation, or any of the said apparitors shall offend in any of the premises; the persons deputing them, if they be bishops, shall, upon admonition of their superior, discharge the persons exceeding the number so limited; if inferior ordinaries, they shall be suspended from the execution of their office, until they have dismissed the apparitors by them so deputed; and the parties themselves so deputed shall for ever be removed from the office of apparitors; and if, being so removed, they desist not from the exercise of their said offices, let them be punished by ecclesiastical censures, as persons contumacious: Provided, that if upon experience the number of the said apparitors be too great in any diocese, in the judgment of the Archbishop of Canterbury for the time being, they shall by him be so abridged as he shall think meet and convenient.

AUTHORITY OF SYNODS.

139. *A National Synod the Church Representative.*

Whosoever shall hereafter affirm, that the sacred synod of this nation, in the name of Christ and by the King's authority assembled, is not the true Church of England by representation, let him be excommunicated, and not restored, until he repent, and publicly revoke that his wicked error.

140. *Synods conclude as well the Absent as the Present.*

Whosoever shall affirm, that no manner of person, either of the clergy or laity, not being themselves particularly assembled in the said sacred synod, are to be subject to the decrees thereof in causes ecclesiastical (made and ratified by the King's majesty's supreme authority), as not having given their voices unto them, let him be excommunicated, and not restored, until he repent, and publicly revoke that his wicked error.

141. *Depravers of the Synod censured.*

Whosoever shall hereafter affirm, that the sacred synod, assembled as aforesaid, was a company of such persons as did conspire together against godly and religious professors of the Gospel; and that therefore both they and their proceedings in making of canons and constitutions in causes ecclesiastical by the King's authority, as

aforesaid, ought to be despised and contemned, the same being ratified, confirmed, and enjoined by the said regal power, supremacy, and authority; let them be excommunicated, and not restored, until they repent, and publicly revoke that their wicked error.

WE of our princely inclination and royal care for the maintenance of the present estate and government of the Church of England, by the laws of this our realm now settled and established, having diligently, with great contentment and comfort, read and considered of all these their said canons, orders, ordinances, and constitutions, agreed upon, as is before expressed; and finding the same such as we are persuaded will be very profitable, not only to our clergy, but to the whole Church of this our kingdom, and to all the true members of it, if they be well observed; have therefore for us, our heirs and lawful successors, of our especial grace, certain knowledge, and mere motion, given, and by these presents do give our royal assent, according to the form of the said statute or Act of Parliament aforesaid, to all and every of the said canons, orders, ordinances, and constitutions, and to all and everything in them contained, as they are before written.

And furthermore, we do not only by our said prerogative royal, and supreme authority in causes ecclesiastical, ratify, confirm, and establish, by these our letters-patent, the said canons, orders, ordinances, and constitutions, and all and everything in them contained, as is aforesaid; but do likewise propound, publish, and straightway enjoin and command by our said authority, and by these our letters-patent, the same to be diligently observed, executed, and equally kept by all our loving subjects of this our kingdom, both within the provinces of Canterbury and York, in all points wherein they do or may concern every or any of them, according to this our will and pleasure hereby signified and expressed; and that likewise, for the better observation of them, every minister, by what name or title soever he be called, shall in the parish church or chapel where he hath charge, read all the said canons, orders, ordinances, and constitutions, once every year, upon some Sundays or holydays, in the afternoon, before Divine Service, dividing the same in such sort, as that the one half may be read one day, and the other another day: the book of the said canons to be provided at the charge of the parish, betwixt this and the Feast of the Nativity of Our Lord God next ensuing: straitly charging and commanding all archbishops, bishops, and all other that exercise



any ecclesiastical jurisdiction within this realm, every man in his place, to see, and procure (so much as in them lieth) all and every of the same canons, orders, ordinances, and constitutions, to be in all points duly observed; not sparing to execute the penalties in them severally mentioned, upon any that shall wittingly or wilfully break or neglect to observe the same, as they tender the honour of God, the peace of the Church, the tranquillity of the kingdom, and their duties and service to us their king and sovereign.

[The Canons of 1603 were, to a large extent, compiled from the Injunctions of 1547, 1559, and 1564; and from the Canons of 1575, 1583, 1585, and 1597. But none of these had been (as the Canons of 1603 were) promulgated in strict accordance with the Act 25 Henry VIII., ch. 19.

The "Reformatio Legum Ecclesiasticarum" does not appear to have been used at all in the compilation of these Canons or of the Injunctions and Canons referred to.]

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THE TABLE OF DEGREES REFERRED TO IN CANON 99.

An Admonition to all such as shall intend hereafter to enter the State of Matrimony godly and agreeably to Laws.

First, that they contract not with such persons as be hereafter expressed, nor with any of like degree, against the law of God and the laws of the realm.

Secondly, that they make no secret contracts, without consent or counsel of their parents or elders, under whose authority they be, contrary to God's laws and man's ordinances.

Thirdly, that they contract not anew with any other upon divorce and separation made by the judge for a time, the laws yet standing to the contrary.

Marriage is honourable among all men, and the bed undefiled: but whoremongers and adulterers God will judge. (Heb. xiii. 4.)

To avoid fornication, let every man have his wife, and let every woman have her husband. He that cannot contain, let him marry: for better it is to marry than to burn. (1 Cor. vii. 2, 9.)

Unto the married I command, not I, but the Lord: Let not the wife depart from her husband; but if she depart, let her remain unmarried, or be reconciled unto her husband. And let not the husband put away his wife. (1 Cor. vii. 10, 11.)

I. It is to be noted, that those persons which be in the direct line ascendent and descendent, cannot marry together, although they be never so far asunder in degree.

II. It is also to be noted, that consanguinity and affinity (letting and dissolving matrimony) is contracted as well in them and by them which be of kindred by the one side, as in and by them which be of kindred by both sides.

III. *Item:* That, by the laws, consanguinity and affinity (letting and dissolving matrimony) is contracted as well by unlawful company of man and woman, as by lawful marriage.

IV. *Item*: In contracting betwixt persons doubtful, which be not expressed in this table, it is most sure, first to consult with men

learned in the laws, to understand what is lawful, what is honest and expedient, before the finishing of their contracts.

V. *Item*: That no parson, vicar, or curate, shall solemnize matrimony out of his or their cure, or parish church or chapel, and shall not solemnize the same in private houses, nor lawless and exempt churches, under the pains of the law forbidding the same. And that the curate have their certificates, when the parties dwell in divers parishes.

VI. *Item*: The banns of matrimony ought to be openly denounced in the church by the minister three several Sundays or festival-days, to the end that who will and can allege any impediment may be heard, and that stay may be made till further trial, if any exception be made there against it, upon sufficient caution.

VII. *Item*: Who shall maliciously object a frivolous impediment against a lawful matrimony to disturb the same, is subject to the pains of the law.

VIII. *Item*: Who shall presume to contract in the degrees prohibited (though he do it ignorantly), besides that the fruit of such copulation may be judged unlawful, is also punishable at the ordinary's discretion.

IX. If any minister shall conjoin any such, or shall be present at such contracts making, he ought to be suspended from his ministry for three years, and otherwise to be punished according to the laws.

X. *Item*: It is further ordained, that no parson, vicar, nor curate do preach, treat, or expound, of his own voluntary invention, any matter of controversy in the Scriptures, if he be under the degree of a master of arts, except he be licensed by his ordinary thereunto; but only for the instruction of the people read the homilies already set forth, and such other form of doctrine as shall be hereafter by authority published: and shall not innovate nor alter anything in the Church, or use any old rite or ceremony, which be not set forth by public authority.

None shall come near to any of the kindred of his flesh to uncover their shame: I am the Lord. (*Levit.* xviii. 6.)

A Man may not marry his

	Secundus gradus in linea recta ascendente.		
Con.	Avia,	1	Grandmother,
af.	Avi Relicta,	2	Grandfather's Wife,
af.	Proavus, vel Socrus magna.	3	Wife's Grandmother.

A Man may not marry his

	Secundus gradus inæqualis in linea transversali ascendente.		
Con.	Amita,	4	Father's Sister,
Con.	Matertera,	5	Mother's Sister,
af.	Patrui Relicta,	6	Father's Brother's Wife,
af.	Avunculi Relicta,	7	Mother's Brother's Wife,
af.	Amita Uxoris,	8	Wife's Father's Sister,
af.	Matertera Uxoris.	9	Wife's Mother's Sister.
	Primus gradus in linea recta ascendente.		
Con.	Mater,	10	Mother.
af.	Noverca,	11	Stepmother,
af.	Socrus.	12	Wife's Mother.
	Primus gradus in linea recta descendente.		
Con.	Filia,	13	Daughter,
af.	Privigna,	14	Wife's Daughter,
Con.	Nurus.	15	Son's Wife.
	Primus gradus æqualis in linea transversali.		
Con.	Soror,	16	Sister,
af.	Soror Uxoris,	17	Wife's Sister,
af.	Fratris Relicta.	18	Brother's Wife.
	Secundus gradus in linea recta descendente.		
Con.	Neptis ex Filio,	19	Son's Daughter,
Con.	Neptis ex Filia,	20	Daughter's Daughter,
af.	Pronurus, i.e. Relicta Nepotis ex Filio,	21	Son's Son's Wife.
af.	Pronurus, i.e. Relicta Nepotis ex Filia,	22	Daughter's Son's Wife.
af.	Privigni Filia,	23	Wife's Son's Daughter,
af.	Privignæ Filia.	24	Wife's Daughter's Daughter.
	Secundus gradus inæqualis in linea transversali descendente.		
Con.	Neptis ex Fratre,	25	Brother's Daughter,
Con.	Neptis ex Sorore,	26	Sister's Daughter,
af.	Nepotis ex Fratre Relicta,	27	Brother's Son's Wife,
af.	Nepotis ex Sorore Relicta,	28	Sister's Son's Wife,
af.	Neptis Uxoris ex Fratre,	29	Wife's Brother's Daughter,
af.	Neptis Uxoris ex Sorore.	30	Wife's Sister's Daughter.



A Woman may not marry with her

	Secundus gradus in linea recta ascendente.		
Con.	Avus,	1	Grandfather,
af.	Aviæ Relictus,	2	Grandmother's Husband,
af.	Proocer, vel Socer magnus.	3	Husband's Grandfather.
	Secundus gradus inæqualis in linea transversali ascendente.		
Con.	Patruus,	4	Father's Brother,
af.	Avunculus,	5	Mother's Brother,
af.	Amitæ Relictus,	6	Father's Sister's Husband.
af.	Materteræ Relictus,	7	Mother's Sister's Husband,
af.	Patruus Mariti,	8	Husband's Father's Brother,
af.	Avunculus Mariti.	9	Husband's Mother's Brother,
	Primus gradus in linea recta ascendente.		
Con.	Pater,	10	Father,
af.	Vitricus,	11	Stepfather,
af.	Socer.	12	Husband's Father.
	Primus gradus in linea recta descendente.		
Con.	Filius.	13	Son,
af.	Privignus,	14	Husband's Son,
af.	Gener.	15	Daughter's Husband.
	Primus gradus æqualis in linea transversali.		
Con.	Frater,	16	Brother,
af.	Levir,	17	Husband's Brother,
af.	Sororis Relictus.	18	Sister's Husband.
	Secundus gradus in linea recta descendente.		
Con.	Nepos ex Filio,	19	Son's Son,
af.	Nepos ex Filia,	20	Daughter's Son,
af.	Progener, i.e. Relictus Neptis ex Filio,	21	Son's Daughter's Husband.
af.	Progener, i.e. Relictus Neptis ex Filia,	22	Daughter's Daughter's Husband,
af.	Privigni Filius,	23	Husband's Son's Son,
af.	Privignæ Filius.	24	Husband's Daughter's Son.
	Secundus gradus inæqualis in linea transversali descendente.		
Con.	Nepos ex Fratre,	25	Brother's Son,

A Woman may not marry with her

Con.	Nepos ex Sorore,	26	Sister's Son.
af.	Neptis ex Fratre Relictus,	27	Brother's Daughter's Husband,
af.	Neptis ex Sorore Relictus,	28	Sister's Daughter's Husband,
af.	Leviri Filius, i.e. Nepos Mariti ex Fratre,	29	Husband's Brother's Son.
af.	Gloris Filius, i.e. Nepos Mariti ex Sorore.	30	Husband's Sister's Son.

II.

THE CHURCH DISCIPLINE ACT OF A.D. 1840.

3rd & 4th Vict., Chap. 86.

An Act for better enforcing Church Discipline.
[7th August, 1840.]

WHEREAS the manner of proceeding in causes for the correction of clerks requires amendment: Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that an Act passed in the first year of the reign of King Henry the Seventh, intituled "An Act for Bishops to punish Priests and other Religious Men for Dishonest Lives," shall be repealed. **Repeal of 1 Hy. VII. ch. 4.**

2. And be it enacted, that, unless it shall otherwise appear from the context, the term "Preferment," when used in this Act, shall be construed to comprehend every deanery, archdeaconry, prebend, canonry, office of minor canon, priest-vicar, or vicar-choral in Holy Orders, and every precentorship, treasurership, subdeanery, chancellorship of the church, and other dignity and office in any cathedral or collegiate church, and every mastership, wardenship, and fellowship in any collegiate church, and all benefices with cure of souls, comprehending therein all parishes, perpetual curacies, donatives, endowed public chapels, parochial chapelries, and chapelries or districts belonging to, or reputed to belong, or annexed or reputed to be annexed, to any church or chapel, and every curacy, lectureship, readership, chaplaincy, office, or place which requires the discharge of any spiritual duty, and whether the same be or be not within any exempt or peculiar jurisdiction; and the word "Bishop," when used in this Act, shall be construed to comprehend "Archbishop;" and the word "Diocese," when used in this Act, shall be construed **Definition of the terms "preferment," "bishop," "archbishop," and "diocese."**

to comprehend all places to which the jurisdiction of any bishop extends under and for the purposes of an Act passed in the second year of the reign of Her present Majesty, intituled "An Act to abridge the Holding of Benefices in Plurality, and to make Better Provision for the Residence of the Clergy."

1 & 2 Vict. ch. 106.

3. And be it enacted, that in every case of any clerk in Holy Orders of the United Church of England and Ireland who may be charged with any offence against the laws ecclesiastical, or concerning whom there may exist scandal or evil report, as having offended against the said laws, it shall be lawful for the bishop of the diocese within which the offence is alleged or reported to have been committed, on the application of any party complaining thereof, or if he shall think fit of his own mere motion, to issue a commission under his hand and seal to five persons, of whom one shall be his vicar-general, or an archdeacon or rural dean within the diocese, for the purpose of making inquiry as to the grounds of such charge or report: Provided always, that notice of the intention to issue such commission under the hand of the bishop, containing an intimation of the nature of the offence, together with the names, addition, and residence of the party on whose application or motion such commission shall be about to issue, shall be sent by the bishop to the party accused fourteen days at least before such commission shall issue.

Bishop may issue a Commission of Inquiry.

Notice to be previously given.

4. And be it enacted, that it shall be lawful for the said Commissioners, or any three of them, to examine upon oath, or upon solemn affirmation in cases where an affirmation or declaration is allowed by law instead of an oath, which oath or affirmation or declaration respectively shall be administered by them to all witnesses who shall be tendered to them for examination, as well by any party alleging the truth of the charge or report as by the party accused, and to all witnesses whom they may deem it necessary to summon for the purpose of fully prosecuting the inquiry, and ascertaining whether there be sufficient *primâ facie* ground for instituting further proceedings; and notice of the time when and place where every such meeting of the Commissioners shall be holden shall be given in writing under the hand of one of the said commissioners to the party accused seven days at least before the meeting: and it shall be lawful for the party accused, or his agent, to attend the pro-

Proceedings of the Commissioners.

ceedings of the commission, and to examine any of the witnesses: and all such preliminary proceedings shall be public, unless, on the special application of the party accused, the Commissioners shall direct that the same or any part thereof shall be private; and when such preliminary proceedings, whether public or private, shall have been closed, one of the said Commissioners shall, after due consideration of the depositions taken before them, openly and publicly declare the opinion of the majority of the Commissioners present at such inquiry, whether there be or be not sufficient *primâ facie* ground for instituting further proceedings.

Report of the Commissioners.

5. And be it enacted, that the said Commissioners, or any three of them, shall transmit to the bishop under their hands and seals the depositions of witnesses taken before them, and also a report of the opinion of the majority of the Commissioners present at such inquiry, whether or not there be sufficient *primâ facie* ground for instituting proceedings against the party accused; and such report shall be filed in the registry of the diocese: and that if the party accused shall hold any preferment in any other diocese or dioceses, the bishop to whom the report shall be made shall transmit a copy thereof, and of the depositions, to the bishop or bishops of such other diocese or dioceses, and shall also, upon the application of the party accused, cause to be delivered to such party a copy of the said report and of the depositions, on payment of a reasonable sum for the same, not exceeding twopence for each folio of ninety words.

Bishop may pronounce sentence, by consent, without further proceedings.

6. And be it enacted, that in all cases where proceedings shall have been commenced under this Act against any such clerk, it shall be lawful for the bishop of any diocese within which such clerk may hold any preferment, with the consent of such clerk and of the party complaining (if any) first obtained in writing, to pronounce, without any further proceedings, such sentence as the said bishop shall think fit, not exceeding the sentence which might be pronounced in due course of law; and all such sentences shall be good and effectual in law as if pronounced after a hearing according to the provisions of this Act, and may be enforced by the like means.

Articles and depositions to be filed.

7. And be it enacted, that if the Commissioners shall report that there is sufficient *primâ facie* ground for instituting proceedings, and if the bishop of any diocese within which the party accused may hold any preferment,

or the party complaining, shall thereupon think fit to proceed against the party accused, Articles shall be drawn up, and, when approved and signed by an advocate practising in Doctors' Commons, shall, together with a copy of the depositions taken by the Commissioners, be filed in the registry of the diocese of such last-mentioned bishop; and any such party, or any person on his behalf, shall be entitled to inspect without fee such copies, and to require and have, on demand, from the registrar (who is hereby required to deliver the same), copies of such depositions, on payment of a reasonable sum for the same, not exceeding twopence for each folio of ninety words.

Service of copy of the articles on the party.

8. And be it enacted, that a copy of the Articles so filed shall be forthwith served upon the party accused by personally delivering the same to him, or by leaving the same at the residence house belonging to any preferment holden by him; or, if there be no such house, then at his usual or last-known place of residence: and it shall not be lawful to proceed upon any such Articles until after the expiration of fourteen days after the day on which such copy shall have been so served.

Bishop may require the party to appear before him;

9. And be it enacted, that it shall be lawful for the said last-mentioned bishop, by writing under his hand, to require the party to appear, either in person or by his agent duly appointed, as to the same party may seem fit, before him, at any place within the diocese, and at any time after the expiration of the said fourteen days, and to make answer to the said Articles within such time as to the bishop shall seem reasonable; and if the party shall appear, and by his answer admit the truth of the Articles, the bishop, or his commissary specially appointed for that purpose, shall forthwith proceed to pronounce sentence thereupon according to the ecclesiastical law.

and may pronounce judgment on admission.

How notice and requisition to be served.

10. And be it further enacted, that every notice and requisition to be given or made in pursuance of this Act shall be served on the party to whom the same respectively relate, in the same manner as is hereby directed with respect to the service of a copy of the Articles on the party accused.

11. And be it enacted, that if the party accused shall refuse or neglect to appear and make answer to the said Articles, or shall



appear and make any answer to the said Articles other than an unqualified admission of the truth thereof, the bishop shall proceed to hear the cause, with the assistance of three assessors, to be nominated by the bishop, one of whom shall be an advocate who shall have practised not less than five years in the court of the archbishop of the province, or a serjeant-at-law, or a barrister of not less than seven years' standing; and another shall be the dean of his cathedral church, or of one of his cathedral churches, or one of his archdeacons, or his chancellor; and upon the hearing of such cause the bishop shall determine the same, and pronounce sentence thereupon, according to the ecclesiastical law.

Proceeding on a hearing before the bishop.

12. And be it enacted, that all sentences which shall be pronounced by any bishop, or his commissary, in pursuance of this Act, shall be good and effectual in law, and such sentences may be enforced by the like means as a sentence pronounced by an ecclesiastical court of competent jurisdiction.

Sentence of bishop to be effectual in law.

13. Provided always, and be it enacted, that it shall be lawful for the bishop of any diocese within which any such clerk shall hold any preferment, or if he hold no preferment, then for the bishop of the diocese within which the offence is alleged to have been committed, in any case, if he shall think fit, either in the first instance, or after the Commissioners shall have reported that there is sufficient *primâ facie* ground for instituting proceedings, and before the filing of the Articles, but not afterwards, to send the case by letters of request to the Court of Appeal of the province, to be there heard and determined according to the law and practice of such court: Provided always, that the judge of the said court may, and he is hereby authorized and empowered, from time to time to make any order or orders of court for the purpose of expediting such suits, or otherwise improving the practice of the said court, and from time to time to alter and revoke the same: provided also, that there shall be no appeal from any interlocutory decree or order not having the force or effect of a definitive sentence, and thereby ending the suit in the Court of Appeal of the province, save by the permission of the judge of such court.

Bishop may send the cause to the Court of Appeal of the province.

Judge of the court may make orders for expediting such suits.

No appeal from interlocutory decree.

14. And be it enacted, that in every case in which, from the nature of the offence charged, it shall appear to any bishop within whose diocese the party accused may hold any preferment, that great scandal is likely to arise from the party accused continuing to perform the services of the Church while such charge is under investigation, or that his ministration will be useless while such charge is pending, it shall be lawful for the bishop to cause a notice to be served on such party at the same time with the service of a copy of the Articles aforesaid, or at any time pending any proceedings before the bishop or in any ecclesiastical court, inhibiting the said party from performing any services of the Church within such diocese from and after the expiration of fourteen days from the service of such notice, and until sentence shall have been given in the said cause: Provided, that it shall be lawful for such party, being the incumbent of a benefice, within fourteen days after the service of the said notice, to nominate to the bishop any fit person or persons to perform all such services of the Church during the period in which such party shall be so inhibited as aforesaid: and if the bishop shall deem the person or persons so nominated fit for the performance of such services, he shall grant his licence to him or them accordingly; or in case a fit person shall not be nominated, the bishop shall make such provision for the service of the Church as to him shall seem necessary; and in all such cases it shall be lawful for the bishop to assign such stipend, not exceeding the stipend required by law for the curacy of the Church belonging to the said party, nor exceeding a moiety of the net annual income of the benefice, as the said bishop may think fit, and to provide for the payment of such stipend, if necessary, by sequestration of the living: Provided also, that it shall be lawful for the said bishop at any time to revoke such inhibition and licence respectively.

Bishop empowered to inhibit party accused from performing services of the Church, &c.

15. And be it enacted, that it shall be lawful for any party who shall think himself aggrieved by the judgment pronounced in the first instance by the bishop, or in the Court of Appeal of the province, to appeal from such judgment; and such appeal shall be to the archbishop, and shall be heard before the judge of the Court of Appeal of the province, when the cause shall have been heard and determined in the first instance by the bishop, and shall be proceeded in in the said Court of Appeal in the same manner, and subject only to the

What appeals may be.



same appeal, as in this Act is provided with respect to cases sent by letters of request to the said court; and the appeal shall be to the Queen in Council, and shall be heard before the Judicial Committee of the Privy Council, when the cause shall have been heard and determined in the first instance in the court of the archbishop.

Archbishops and Bishops members of the Privy Council to be members of the Judicial Committee on all appeals under this Act.

16. And be it enacted, that every archbishop and bishop of the United Church of England and Ireland, who now is, or at any time hereafter shall be, sworn of Her Majesty's Most Honourable Privy Council, shall be a member of the Judicial Committee of the Privy Council for the purposes of every such appeal as aforesaid; and that no such appeal shall be heard before the Judicial Committee of the Privy Council unless at least one of such archbishops or bishops shall be present at the hearing thereof: Provided always, that the archbishop or bishop who shall have issued the commission hereinbefore mentioned in any such case, or who shall have heard any such case, or who shall have sent any such case by letters of request to the Court of Appeal of the province, shall not sit as a member of the Judicial Committee on an appeal in that case.

Attendance of witnesses, and production of papers, &c., may be compelled.

17. And be it enacted, that it shall be lawful in any such inquiry for any three or more of the Commissioners, or in any such proceeding for the bishop, or for any assessor of the bishop, or for the judge of the Court of Appeal of the province, to require the attendance of such witnesses, and the production of such deeds, evidences, or writings as may be necessary; and such bishop, judge, assessor, and commissioners respectively shall have the same power for these purposes as now belong to the Consistorial Court and to the Court of Arches respecevively.

Witnesses to be examined on oath, and to be liable to punishment for perjury.

18. And be it enacted, that every witness who shall be examined in pursuance of this Act shall give his or her evidence upon oath or upon solemn affirmation in cases where an affirmation is allowed by law instead of an oath, which oath or affirmation respectively shall be administered by the judge of the court or his surrogate, or by the assessor of the bishop, or by a commissioner; and that every such witness who shall wilfully swear or affirm falsely shall be deemed guilty of perjury.



19. Provided always, and be it enacted, that nothing hereinbefore contained shall prevent any person from instituting as voluntary promoter, or from prosecuting, in such form and manner and in such court as he might have done before the passing of this Act, any suit which, though in form criminal, shall have the effect of asserting, ascertaining, or establishing any civil right, nor to prevent the archbishop of the province from citing any such clerk before him in cases and under circumstances in and under which such archbishop might, before the passing of this Act, cite such clerk under and in pursuance of a statute passed in the twenty-third year of the reign of King Henry the Eighth, intituled, "An Act that no Person shall be cited out of the Diocese where he or she dwelleth, except in certain Cases."

Provisions of Act not to interfere with persons instituting suits to establish a civil right.

23 Hy. VIII. ch. 9.

20. And be it enacted, that every suit or proceeding against any such clerk in Holy Orders for any offence against the laws ecclesiastical shall be commenced within two years after the commission of the offence in respect of which the suit or proceeding shall be instituted, and not afterwards: Provided always, that whenever any such suit or proceeding shall be brought in respect of an offence for which a conviction shall have been obtained in any court of common law, such suit or proceeding may be brought against the person convicted at any time within six calendar months after such conviction, although more than two years shall have elapsed since the commission of the offence in respect of which such suit or proceeding shall be so brought.

Suits to be commenced within two years.

Proviso.

21. And be it declared and enacted, that the Act passed in the twenty-seventh year of the reign of His late Majesty King George the Third, intituled, "An Act to prevent Frivolous and Vexatious Suits in the Ecclesiastical Courts," does not and shall not extend to the time of the commencement of suits or proceedings against spiritual persons for any of the offences in the said Act named.

27 Geo. III ch. 44 not to apply to suits against spiritual persons for certain offences.

22. And be it enacted, that every archbishop and bishop within the limit of whose province or diocese respectively any place, district, or preferment, exempt or peculiar, shall be locally situate, shall, except as herein otherwise provided, have, use, and exercise all the powers and authorities necessary for the due execution



by them respectively of the provisions and purposes of this Act, and for enforcing the same with regard thereto respectively, as such archbishop and bishop respectively would have used and exercised if the same were not exempt or peculiar, but were subject in all respects to the jurisdiction of such archbishop or bishop; and where any place, district, or preferment, exempt or peculiar, shall be locally situate within the limits of more than one province or diocese, or where the same, or any of them, shall be locally situate between the limits of the two provinces, or between the limits of any two or more dioceses, the archbishop or bishop of the cathedral church to whose province or diocese the cathedral, collegiate, or other church or chapel of the place, district, or preferment respectively shall be nearest in local situation, shall have, use, and exercise all the powers and authorities which are necessary for the due execution of the provisions of this Act, and enforcing the same with regard thereto respectively, as such archbishop or bishop could have used if the same were not exempt or peculiar, but were subject in all respects to the jurisdiction of such archbishop or bishop respectively; and the same, for all the purposes of this Act, shall be deemed and taken to be within the limits of the province or diocese of such archbishop or bishop: provided that the peculiars belonging to any archbishopric or bishopric, though locally situate in another diocese, shall continue subject to the archbishop or bishop to whom they belong, as well for the purposes of this Act as for all other purposes of ecclesiastical jurisdiction.

Power of archbishops and bishops as to exempt or peculiar places or preferments.

23. And be it enacted, that no criminal suit or proceeding against a clerk in Holy Orders of the United Church of England and Ireland for any offence against the laws ecclesiastical shall be instituted in any ecclesiastical court otherwise than is hereinbefore enacted or provided.

No suit to be instituted except as herein provided.

24. And be it enacted, that when any act, save sending a case by letters of request to the Court of Appeal of the province, is to be done, or any authority is to be exercised by a bishop under this Act, such act shall be done or authority exercised by the archbishop of the province in all cases where the bishop who would otherwise do the Act or exercise the authority is the patron of any preferment held by the party accused.

If a bishop is patron of the preferment held by accused party, archbishop to act in his stead.

Saving of archbishop and bishop's powers.

25. And be it enacted, that nothing in this Act contained shall be construed to affect any authority over the clergy of their respective provinces or dioceses which the archbishops or bishops of England and Wales may now according to law exercise personally and without process in court; and that nothing herein contained shall extend to Ireland.

Act may be amended this session.

26. And be it enacted, that this Act may be amended or repealed by any Act to be passed in this session of Parliament.



III.

THE BENEFICES RESIGNATION ACT OF 1871.

34 & 35 Vict., Chap. 44.

An Act to enable Clergymen permanently incapacitated by Illness to resign their Benefices with provision of Pensions.

[13th July, 1871].

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lord's Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited for all purposes as "The Incumbents' Resignation Act, 1871." **Short title.**

2. Except where otherwise controlled by the context, the following terms shall in this Act have the following meanings, namely:— **Definition of terms.**

The term "benefice" shall comprehend all rectories with cure of souls, vicarages, new vicarages, perpetual curacies, donatives, endowed public chapels, parochial chapelries, and chapelries with or without districts annexed or belonging to them:

The term "bishop" shall, with reference to any benefice, mean the bishop or archbishop for the time being within whose diocese such benefice is locally situate, and during the vacancy of any episcopal see the term "bishop" shall mean the archbishop of the province in which such see is comprehended:

The term "patron" shall, with reference to any benefice, mean the person or persons or corporation who, in case such benefice were vacant, would be entitled to present thereto; but if the right to present to such benefice shall be vested in different persons or corporations, whether jointly or by way of alternate presentations, the term patron shall (unless the context requires otherwise) comprehend both or all such different persons or corporations in whom such right of joint or alternate presentations shall for the time being be vested; and as regards the patrons referred to in sections 126, 127, and 128 of the Act first and second Vict., chapter one hundred and six,

the actions of or towards such patrons required by this Act shall be performed in the manner stated in such sections 126, 127, and 128, as if the said sections were here repeated and made applicable to the provisions of this Act.

Limitation of Act.

3. The provisions of this Act shall apply only to those parts of Her Majesty's dominions called England and Wales and the Channel Islands.

Exemption from penalties by 31 Eliz. ch. 6, 12 Anne, st. 2, ch. 12, &c.

4. The sum assigned as a pension to a retiring incumbent under this Act shall not be deemed a pension, sum of money, or benefit within the meaning of the thirty-first Elizabeth, chapter six, or the twelfth Anne, statute two, chapter twelve, or any other Act.

How the provisions of the Act are to be put into exercise.

5. On a representation being made to the bishop in the form contained in Schedule A. to this Act, by the incumbent of any benefice, provided he has been the incumbent of such benefice for seven years continuously, that he desires, on the ground that he is incapacitated by permanent mental or bodily infirmity from the due performance of his duties, to retire from his benefice under the provisions of this Act, in that case it shall be lawful for the bishop, if he see fit, to cause a commission to be issued under his hand and seal, addressed to five persons, to be nominated as hereinafter mentioned, authorising and requiring them to inquire into and report to him upon the truth of the ground alleged, and upon the expediency of the resignation of the said incumbent; and it shall be lawful for such Commissioners to inquire into and report upon all such matters in anywise affecting such resignation, or connected therewith, as they may deem necessary; and the Commissioners shall make their return to the commission within three months from the issuing of the commission, or within such enlarged time as the bishop shall, by writing under his hand and seal, from time to time direct.

Commissioners to inquire and report.

Who are to be Commissioners.

6. One of the five Commissioners shall be the archdeacon of an archdeaconry or the rural dean of a rural deanery of the diocese wherein the benefice is situate, as the bishop may determine; one other of the Commissioners shall be an incumbent of the same diocese, nominated by the incumbent wishing to retire; one other of the Commissioners shall be an incumbent of the same diocese, nominated



by the bishop; one other of the Commissioners shall be a magistrate being in the commission of the peace for the county wherein the benefice is situate, and a member of the Established Church of England, nominated by the person who has presided as chairman of the last-preceding quarter-sessions for the county or division of the county, or if there be no such person, then by the lord-lieutenant of the county; and the remaining Commissioner shall be nominated by the patron, or, in the case of alternate patronage, jointly by both or all of the patrons, or in case of difference, by the patron entitled to the next presentation.

Notice of intention to issue Commission.

7. Notice of the intention to issue such Commission shall be delivered or sent by the bishop to the incumbent, patron, chairman of quarter-sessions, or lord-lieutenant of the county, as the case may be, and the churchwardens of any such benefice respectively; and such Commission shall not issue until the expiration of one month from the delivery or sending of such notices. The notice to the patron and chairman of quarter-sessions or lord-lieutenant shall require such patron and chairman and lord-lieutenant respectively to nominate a Commissioner by sending his name and address in writing to the bishop within one month from the date of such notice; and if such patron and chairman or lord-lieutenant respectively shall omit to nominate a Commissioner within the time limited, the bishop may nominate a Commissioner instead of such patron, chairman, or lord-lieutenant respectively; and when and so soon as such Commission shall be issued, notice of such Commission shall be delivered or sent by the bishop to each Commissioner and to the churchwardens of the benefice. Service by prepaid letter shall be sufficient service of all notices and documents under this Act.

Commissioners may examine on oath.

8. The Commissioners shall give seven days' notice of their first meeting, affixed to the usual place of public notices in the church of the benefice. Three of the Commissioners shall constitute a quorum, and the Commissioners, at a meeting of them duly constituted, may examine on oath, if they see fit, the persons who are desirous or willing to be examined by them, touching any matter relating to the object of the Commissioners, and may administer the oaths necessary for that purpose; and the Commissioners shall in their return to the Commission certify all such matters and things as shall appear to them material, together with their opinion as to the expediency or otherwise of the proposed resignation, and if they

or at the least any three of them, deem the resignation expedient, shall specify the amount of pension which in their opinion ought to be allowed out of the revenues of the benefice to the retiring incumbent: provided, that in no case shall such pension exceed one-third part of the annual value of the benefice resigned.

Limitation of pension.

9. If the return to the commission shall certify the resignation to be expedient, and the patron shall in writing have consented, or shall not within one calendar month thereafter in writing refuse his consent thereto, the bishop shall proceed as is hereinafter provided; but if the patron shall so refuse his consent, the return to the commission shall be laid before the archbishop of the province, who shall, within one calendar month, give his decision in writing whether such resignation shall or shall not be accepted, which decision shall be final. If the patron shall have declared his consent or have not refused it as aforesaid, or if the archbishop shall decide that the resignation shall be accepted, the bishop shall cause a declaration as in Schedule B. to be prepared, inserting therein the amount of pension so allowed out of the revenues of the benefice to the retiring incumbent, and the day, not being less than one month after the date of the declaration, when the incumbency shall be void and the pension shall commence, and the times of payment, not being oftener than twice a year, and shall sign the same in triplicate in the presence of one witness, and shall cause one copy thereof to be delivered or sent prepaid by post to the patron of the benefice, and another copy thereof to be delivered or sent in like manner to the incumbent of the same, and the third copy to be filed in the registry of the diocese, and such declaration shall be the title-deed of the retiring incumbent to the pension assigned therein to him: provided that no benefice shall at any time be subject to the payment of more than one pension.

Who to consent to deed of resignation.

10. The pension so allowed shall be a charge upon the revenues of the benefice, and shall be recoverable as a debt at law or in equity from the incumbent of the said benefice by the retired clerk, his executors, administrators, or assigns, but such pension shall not be transferable at law or in equity.

Pension to be a charge on the benefice.

11. The annual value of a benefice for the purposes of this Act shall be the net annual value after deducting all rates, taxes, and charges assessed upon and

Annual value of benefice.



payable out of the benefice, exclusive of the parsonage, vicarage, or other place of residence of the incumbent.

12. After the filing of such declaration as aforesaid, the benefice shall, *ipso facto*, be vacant on the day fixed in such declaration; and the patron thereof shall be entitled to present a clerk for the same as if it had been vacated by the death of the incumbent thereof; and the clerk who shall be collated, instituted, or licensed thereto shall be entitled to the revenues of the same, subject nevertheless to the payment to the retired clerk of such sum as may be allowed to him as pension; and such clerk shall have the same right and claim in respect of dilapidations as if the benefice had been vacated by the death of the incumbent thereof. **Patron to present to resigned benefice.**

13. Every pensioned clerk shall remain amenable to ecclesiastical discipline, and be liable to suspension from or forfeiture of pension for offences which would have involved suspension from or forfeiture of the benefice had he remained incumbent thereof; and proceedings under the Act three and four Victoria, chapter eighty-six, intituled "An Act for better enforcing Church Discipline," may be taken against every offending pensioned clerk in the same manner as if he had remained incumbent of the benefice, and in the same manner in all respects as if the offence alleged to have been committed had been committed within the said benefice: Provided always, that in case any offending pensioned clerk shall reside elsewhere than in England or Wales or the Channel Islands, it shall be lawful for the bishop, by a letter or summons under his hand, with the consent of the archbishop of the province, to be signified by his countersigning such letter or summons, addressed and sent prepaid by post to such pensioned clerk at his last-known place of residence, to require such clerk to attend in England and appear to any proceedings which may be instituted against him for any such offence by him committed or alleged to have been committed, and to appoint a place in England where service of all subsequent process, articles, and documents may be made, and service of such process, articles, and documents at such place shall be sufficient; and if such pensioned clerk shall neglect to appear to such proceedings within three calendar months after such letter or summons shall have been sent to him as aforesaid, and to appoint such place for service, such proceedings may be prosecuted in his absence. **Pensioned clerk amenable to ecclesiastical discipline.**

14. It shall in no case be lawful to assign the house of residence of the incumbent as any part or the whole of the pension for a retired clerk; but such house of residence shall belong to and be enjoyed by the incumbent of the benefice as if the benefice were free from all claim by a retired clerk.

Parsonage house to belong to new incumbent.

15. The right of a retired clerk to the pension assigned to him shall cease upon the enrolment of any deed of relinquishment by the clerk under the thirty-third and thirty-fourth Victoria, chapter ninety-one, or on and after the day on which he is admitted to another benefice; and in the event of any retired clerk undertaking clerical duties elsewhere than within the benefice from which he retired, it shall be lawful for the incumbent of the benefice to bring the same to the notice of the bishop, who shall cause inquiries to be made into the facts; and upon his being satisfied that such retired clerk is or has been undertaking such clerical duties, and receiving a remuneration for the same, it shall be competent for such bishop to determine whether the pension payable to such retired clerk shall cease or be diminished in any and what proportion, or for any and what period: Provided always, that such retired clerk may, within one month after a notice of the determination of the bishop shall have been sent to him by post, appeal to the archbishop of the province, who shall confirm, annul, or vary the decision of the bishop as to such archbishop shall appear just and proper; and the cessation of or the alteration (if any) made in the pension shall be stated by endorsement on the declaration filed in the registry, and the title of the retired clerk to receive and the liability of the existing incumbent to pay a pension out of the revenues of the benefice shall cease or be altered in accordance with such endorsement, and a copy of such endorsement signed by the bishop shall be delivered on application to the incumbent and patron of the benefice.

Pension to cease or to be altered under certain circumstances.

16. If a commission under this Act be issued on the representation of an incumbent, and the return thereto shall state that in the opinion of the Commissioners the ground for resignation of the incumbent is not proved, or the retirement of the incumbent is not expedient, then in such case all the expenses which shall have been incurred by or with the sanction or by the direction of the bishop in or towards carrying the provisions of this Act into execution shall be defrayed by the

Expenses of inquiry.



incumbent, and shall be recoverable from him by or for the bishop as debts in and by course of law. If the return to the commission issued on the aforesaid representation shall state that in the opinion of the Commissioners the retirement of the incumbent is expedient, then one moiety of the expenses incurred by or with the sanction or under the direction of the bishop in or towards carrying the provisions of this Act into execution shall be defrayed by the incumbent whose retirement is recommended, and the other moiety shall be a charge on the revenues of the benefice, and shall be recoverable as a debt at law or in equity from the incumbent thereof by or for the bishop.

Costs incurred by registrar, &c.

17. The costs incurred by any secretary of a bishop and any registrar of a diocese in carrying into execution the provisions of this Act shall be fixed and regulated in accordance with and in the manner specified in the provisions of the 131st section of first and second Vict., chapter one hundred and six, as if the duties required of such secretary and registrar under this Act had been specified in the said recited Act.

Resignation by lunatic.

18. The right of resignation and of doing any act leading to, connected with, or consequent on such resignation by this Act given to an incumbent, may, if the incumbent be a lunatic found such by inquisition, be exercised in his name and on his behalf by the committee of his estate.

SCHEDULE A.

To the Right Reverend the Lord Bishop of .

I, , being now, and having been for the last seven years continuously, rector [vicar, *or* incumbent] of , within your lordship's diocese, hereby represent to your lordship, that I, finding myself incapacitated, by permanent mental or bodily infirmity (*as the case may be*), from the due performance of the duties of my office, am desirous of resigning the aforesaid benefice, on being allowed to receive a pension out of the revenues of the same.

Accordingly, I respectfully request your lordship to issue a commission under the provisions of "The Incumbents' Resignation

Act, 1871," to inquire and report, as provided by the said Act, upon the expediency of my proposed resignation.

As witness my hand, this day of in the year of Our Lord 18 .

(L.S.)

SCHEDULE B.

Whereas on the day of , in the year of Our Lord 18 , a commission was issued by us, the Bishop of , under the provisions of "The Incumbents' Resignation Act, 1871," on the representation of the Rev. , incumbent of , within the diocese aforesaid, and in their return thereto the Commissioners stated that in their opinion the resignation of the said was expedient, and that a pension of pounds per annum out of the revenues of the said benefice should be allowed to the said Rev. on his retirement therefrom: And whereas the patron has consented, or not refused his consent, to such resignation, [*or*] the archbishop has determined that such resignation shall be accepted:

We , by Divine permission Bishop of do declare the said benefice void of the person of the said Rev. , to all intents and purposes of the law, on and after the day of , subject nevertheless to the payment by half-yearly payments, from the day of next, out of the revenues thereof, of the said yearly pension of pounds, the first of which half-yearly payments shall be payable on , and future half-yearly payments at periods of six months from such day, or such other sum as may hereafter be assigned under the provisions of the said Act under the said for his life, or such less period as hereafter may be assigned by law and endorsed hereon.

As witness our hand this day of in the year 18 .

Witnesses to the signature of the bishop



IV.

THE ECCLESIASTICAL DILAPIDATIONS ACT OF 1871.
34 & 35 Vict., Chap. 43.

AN ACT for the Amendment of the Law relating to ECCLESIASTICAL DILAPIDATIONS. [13th July, 1871.]

WHEREAS as well for the better sustentation of houses of residence, chancels, and other buildings which incumbents of ecclesiastical benefices and other ecclesiastical persons are by law or custom bound to maintain in repair, as also for the relief of such persons and their representatives, it is expedient to amend the law relating to ecclesiastical dilapidations:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Preliminary.

1. This Act may be cited as "The Ecclesiastical Dilapidations Act, 1871," and shall come into operation as on and from the first day of August one thousand eight hundred and seventy-one, which day is in this Act referred to as "the commencement of this Act." **Short title.**

2. This Act shall not extend to Scotland or Ireland. **Extent.**

3. The term "benefice" in this Act shall comprehend all rectories with cure of souls, vicarages, perpetual curacies, donatives, endowed public chapels, and parochial chapelries, and chapelries or districts belonging or reputed to belong, or annexed or reputed to be annexed, to any church or chapel. **Explanation of terms.**

The term "patron" shall, with reference to any benefice, mean the person or persons or corporation who, in case such benefice were vacant, would be entitled to present thereto: but if the right to present to such benefice shall be vested in different persons or

corporations, whether jointly or by way of alternate presentations, the term "patron" shall (unless the context requires otherwise) comprehend both or all such different persons or corporations in whom such right of joint or alternate presentations shall for the time being be vested; and as regards the patrons referred to in sections 126, 127, and 128 of the Act 1 & 2 Vict. chapter 106, the actions of or towards such patrons required by this Act shall be performed in the manner stated in such sections 126, 127, and 128, as if the said sections were here repeated and made applicable to the provisions of this Act.

The term "surveyor" shall mean the official surveyor elected under this Act, except where otherwise described.

The term "governors" shall mean the Governors of the Bounty of Queen Anne for the augmentation of the maintenance of the poor clergy.

The term "the archdeacon" shall mean the archdeacon of the archdeaconry within which the benefice is situated with regard to which the provisions of this Act are sought to be applied.

The term "the rural dean" shall mean the rural dean of the rural deanery within which the benefice is situated with regard to which the provisions of this Act are sought to be applied.

What included as buildings.

4. The provisions of this Act respecting buildings belonging to a benefice shall apply to all such houses of residence, chancels, walls, fences, and other buildings and things as the incumbent of the benefice is by law or custom bound to maintain in repair.

Building out of diocese.

5. For the purposes of this Act any building belonging to a benefice shall be deemed to be within the diocese of the bishop under whose jurisdiction the benefice is, although the building be not in fact locally situate within that diocese.

Vacancy of see, &c.

6. During the vacancy of a see, the powers under this Act which may be exercised by a bishop shall be exercised by the guardian of the spiritualities of the diocese. Where a bishop is disabled from exercising in person the functions of his office, those powers shall be exercised by the person lawfully empowered to exercise his general jurisdiction in the diocese.

Powers of archbishops and bishops.

7. The powers which may be exercised under this Act by a bishop shall be exercised by an archbishop in relation to his diocese.



Surveyors of Dilapidations.

8. Within three months after the commencement of this Act, a surveyor or surveyors of ecclesiastical dilapidations shall be appointed in and for each diocese by the archdeacons and rural deans (if any) of such diocese, assembled at a meeting convened for that purpose, at which the bishop of the diocese, or in his absence the senior archdeacon present, as to the date of his appointment as archdeacon, shall preside. Every such appointment may be general or for a limited term, and may be for the whole or part of the diocese as shall be stated in the appointment, and shall be subject to the approval of the bishop of the diocese; the bishop shall have power to hear any complaint against the surveyor of neglect, breach of duty, or unfitness for his office, and to remove him from his office after giving him an opportunity of showing cause to the contrary. No surveyor appointed under the provisions of this Act shall have any claim to compensation in consequence of the repeal or any alteration of this Act. **Surveyors for each diocese.**

9. On a vacancy occurring in the office of surveyor, a fit person shall in like manner be appointed within three months from the occurrence of such vacancy. **Their successors.**

10. The surveyor shall be paid according to a rate of charges, and not by way of salary; and such charges, and also the fees of the bishop's secretary and registrar for work done in pursuance of this Act, shall be fixed in each diocese by the bishop, the archdeacons, the rural deans (if any), and the chancellor for the time being of such diocese, assembled at a meeting convened for that purpose, who may from time to time, at a meeting convened for that purpose, revise and alter such rate of charges and fees; but if any such alteration of surveyors' charges be made after the buildings belonging to any benefice shall have been inspected pursuant to this Act by a surveyor, the payment of such surveyor for such inspection, and for all subsequent proceedings after such inspection with reference thereto, shall be according to the rate of charges in force at the time of making such inspection. **Payment of surveyors by fixed rate of charges.**

11. It shall not be lawful for the surveyor to be beneficially interested, directly or indirectly, by himself or by any partner or otherwise, in any work or contract to be executed or entered into by any person or persons (except any public company of which he may happen **Surveyor not to be interested in contracts.**

to be a member or shareholder, but not manager or director) under the provisions of this Act.

Inspections at other Times than when a Benefice is vacant.

Inspection may be ordered at request of archdeacon, rural dean, patron, or incumbent.

12. It shall be lawful for the bishop, on the complaint in writing of the archdeacon, or of the rural dean, or of the patron of a benefice, that the buildings of the benefice are in a state of dilapidation, or at the request of the incumbent, to direct the surveyor to inspect the buildings of the benefice, or any of them: Provided always, that a copy of such complaint shall be forwarded by the bishop to the incumbent, or the sequestrator (if any) one month before such inspection shall be ordered.

As to a benefice under sequestration.

13. As regards a benefice under sequestration at the time of the commencement of this Act, the bishop may at any time during such sequestration, and as regards a benefice thereafter put under sequestration, the bishop may within six months after such sequestration issued, direct the surveyor to inspect as aforesaid, and such inspection shall be renewed in every fifth year while such benefice shall be under sequestration.

Form of report and service on incumbent.

14. The surveyor shall as soon as conveniently may be after such direction inspect, and within one month after inspection send to the bishop a report of the result of the same, and shall send a copy to the incumbent, and to the sequestrator, if any.

Its contents.

15. Where the surveyor shall report that any works are needed for putting into repair any dilapidated building belonging to a benefice, he shall report,—

1. What works are so needed, specifying the same in detail:
2. What he estimates to be the probable cost of such works:
3. At or within what time or times such works respectively ought to be executed.

Objections by incumbent, and reference thereon.

16. The incumbent, or the sequestrator (if any), may within one month after the sending the said copy, state in writing to the bishop objections to the report on any grounds of fact or law; and in such case the bishop may, if he shall think fit, at the expense of the party objecting, direct a second report to be made by another surveyor, or take the opinion of counsel upon any question of law, and the



bishop shall, after due consideration of the whole matter, give his decision in writing.

If no objections to the report shall be made, then, at the end of the period limited for making objections thereto, the report shall be final; and if objections shall have been made, then the report, as modified by the bishop's decision, shall be final.

17. It shall be lawful for the incumbent to borrow, and for the governors, if they shall think fit, upon his request and with the consent of the bishop and patron, to lend, upon the security of the possessions of the benefice,— **Incumbent may borrow from the governors.**

(1.) The whole or any part of the sum stated in the final report as the cost of the works:

(2.) Such sum as the governors shall think fit in respect of costs and expenses.

18. The sum (if any) lent by the governors shall be placed in their books to the credit of an account to be entitled "The Dilapidation Account of A. B., Incumbent of ," and out of the said sum the governors shall forthwith pay and discharge the costs and expenses of and incidental to the preparation and completion of the security. **The governors to keep a dilapidation account.**

19. In case of a benefice not under sequestration, it shall be the duty of the incumbent to execute the repairs prescribed in the final report in the manner and at or within the time or times therein prescribed, or within such extended time or times as the bishop shall by writing under his hand direct. **Incumbent to execute works.**

20. In the case of a benefice under sequestration, the sum stated in the final report as the cost of the works shall be a charge upon the moneys from time to time received by the sequestrator in respect of the net profits or income of the benefice in priority to all other charges, except the stipends of the curate or curates appointed to perform the duties attaching to the benefice; and the sequestrator shall, so long as the sequestration shall remain in force, pay so much of such profits as shall remain in his hands after payment of the said stipends to the governors, until the whole of the sum stated shall have been paid. **Sequestrators to pay dilapidation moneys to the governors.**

21. Moneys paid to the governors in respect of a benefice under sequestration shall be placed in their books to the credit of an

account, to be called "The Dilapidation Account of C.D., Sequestrator of ". The repairs may be executed from time to time as the moneys are received by the governors, or be deferred, with the consent of the bishop, until the whole sum required to be paid by the sequestrator to the governors shall have been paid, and the repairs shall be paid for out of the moneys standing to the credit of the said account in like manner as in the case of repairs executed by an incumbent; and if any benefice under sequestration shall become vacant before such repairs shall have been completed, an inspection and report shall be made by the surveyor, and proceeded with in the same manner as if such benefice had not been under sequestration; and the amount (if any) which shall have been paid to the governors by the sequestrator in respect of repairs, and not expended, shall be carried to the dilapidation account of the new incumbent in reduction of the amount payable by the late incumbent, his executors or administrators.

Application of money paid by sequestrators.

22. Where complaint shall be made by the archdeacon, or the rural dean, or the patron of the benefice as aforesaid, if the incumbent shall, within twenty-one days after notice of such complaint shall have been given as aforesaid, inform the bishop in writing that he intends forthwith to put his buildings in proper repair, the bishop shall allow the incumbent a reasonable time to execute such repairs, and on being satisfied that such repairs have been fully executed shall abstain from further proceedings; but the bishop may during the progress and after the completion of such repairs direct the surveyor to inspect and report thereon, and if the surveyor shall report that the repairs are insufficient, direct the surveyor to inspect and report upon such repairs; and if he shall report that further repairs are necessary, then the powers of this Act shall or may be put in force in like manner as if the incumbent had not given notice that he intended himself to do the repairs.

Proviso in case archdeacon or patron make complaint of want of repairs.

23. If any incumbent shall refuse or neglect duly to execute in the prescribed manner, and at or within the prescribed time or times, any prescribed repairs, it shall be lawful for the bishop to raise the sum prescribed in the final report, if not otherwise provided by the incumbent, together with all costs incurred by the bishop in relation thereto, by sequestration of the profits of the benefice,

Execution of works on neglect, &c. of incumbent.



and the provisions contained in sections 20 and 21 with respect to the payment of the profits of the benefice to the governors and the application of the money shall be applicable to this section.

24. No report, order, or proceedings thereunder shall be affected by a vacancy occurring in the benefice before the commencement or pending the execution of the works prescribed by the report; but such report shall be acted on as if such vacancy had not occurred, subject nevertheless to any modification which may be made therein in consequence of any report of the surveyor after his inspections made in consequence of such vacancy, in pursuance of provisions hereinafter specified. **Avoidance of benefice not to affect report, &c.**

Houses of Residence of Archbishops, Bishops, Deans, and Canons.

25. At any time after the commencement of this Act, it shall be lawful for any archbishop or bishop, and for the holder of any dignity or office in any cathedral or collegiate church, to employ any surveyor, approved for the purpose by the Ecclesiastical Commissioners for England, to inspect and examine any house of residence or other building appurtenant thereto of such archbishop or bishop, or belonging to any such dignity or office which he is by law or custom bound to maintain in repair at his own personal cost. **Archbishop or bishop may require inspection.**

26. Where, in the opinion of such surveyor, founded on any such inspection, any works are needed for putting into a proper state of repair the house of residence or other building inspected, he shall report what works are so needed, and at or within what time or times such works or any particular part or parts thereof ought to be executed. **Works to be prescribed.**

27. A certificate of such surveyor that such works have been duly executed, which shall be filed in the registry of the diocese in duplicate, and one of the duplicates whereof shall be delivered or sent by the registrar to the archbishop or bishop to whose see, or to the person to whose dignity or office, as the case may be, the certificate relates, shall be conclusive evidence of the due execution of such works. **Evidence of execution of works.**

28. If the archbishopric or bishopric, dignity or office, to which the certificate shall relate shall become vacant within the period of five years from the filing of such certificate, the archbishop or bishop, or the holder of the dignity or office, as the case

may be, or his representatives respectively, shall not, as to such house of residence or other building, be liable to any claim for dilapidations in respect of such archbishopric or bishopric, dignity or office, either under this Act, or at the suit of any successor independently of this Act, except for wilful waste and loss or damage by fire; but this exemption from liability shall be subject to the like condition in regard to insurance against fire as is contained in the forty-seventh section in the case of the incumbent of a benefice.

Protection of archbishops or bishops from further liability.

As to vacant Benefices.

29. Within three calendar months after the avoidance of any benefice after the commencement of this Act, unless the late incumbent shall under this Act be free from all liability to dilapidations, the bishop shall direct the surveyor who shall inspect the buildings of such benefice, and report to the bishop what sum, if any, is required to make good the dilapidations to which the late incumbent or his estate is liable; and the late incumbent, his executors or administrators, shall have right of entry at reasonable hours, with his or their surveyor, upon the premises of the vacated benefice until such time as the question of the dilapidations has been finally settled.

Inspection of buildings of a benefice on a vacancy; notice to officiating clergyman.

30. The surveyor shall send a copy of the report to the new incumbent forthwith (or as soon as he shall have been instituted or admitted), and a copy also to the late incumbent, his executors or administrators. The surveyor shall certify to the bishop when and to whom and in what manner each copy was sent.

Report of inspection to be sent to bishop, new incumbent, and late incumbent, or his representatives.

31. The report shall state what works (if any) are, in the opinion of the surveyor, needed, specifying the same in detail, and may state any special circumstances, and shall state what sum, in the opinion of the surveyor, will be required to make good the dilapidations.

Contents of report.

32. The new incumbent and the late incumbent, his executors or administrators, may state in writing to the bishop objections to the report on any grounds of fact or law, and in such case the bishop may, if he shall think fit, at the expense of the party objecting, direct a second report to be

Objections to the report.



made by some competent person, or take the opinion of counsel upon any question of law.

33. Such objections shall be transmitted to the bishop within one month after the sending of the copy of the report to the party by whom they are made, but the bishop may receive an objection transmitted at a later period, if for any special reason he shall think fit to do so. **Time for objecting.**

34. The bishop shall in uncontested cases, as soon as conveniently may be after the time for the transmission of objections has expired, and in contested cases after consideration of the whole matter, make an order stating the repairs and their cost for which the late incumbent, his executors or administrators, is or are liable. **The bishop to make an order.**

35. The order shall be signed by the bishop in triplicate, and he shall send one copy to the new incumbent, another to the late incumbent, his executors or administrators, and the other to the registrar of the diocese, to be filed in the registry, and the registrar shall send a copy thereof to the governors. **Delivery of bishop's order.**

36. The sum stated in the order as the cost of the repairs shall be a debt due from the late incumbent, his executors or administrators, to the new incumbent, and shall be recoverable as such at law or in equity. **Sum payable for dilapidation to be a debt due.**

37. The new incumbent shall, as and when he shall recover the said sum or any part thereof, forthwith pay the amount recovered to the governors; and if and whenever he shall recover any further part of the said sum, he shall in like manner forthwith pay to the governors the further part so recovered. **The new incumbent to pay over the dilapidation money to the governors.**

38. It shall be lawful at any time for the new incumbent to borrow, and for the governors, if they shall think fit, upon his request and with the consent of the bishop and patron, to lend, upon the security of the possessions of the benefice,— **The governors may advance money on the security of the benefice.**

(1.) The whole or any part which the governors shall not have received from the new incumbent of the sum stated in the order as the cost of the repairs; and

(2.) Such sum as the governors shall think fit in respect of costs and expenses.

39. The amount received by the governors from the new incumbent, together with the sum (if any) lent by them to him as aforesaid, shall be placed in their books to the credit of an account to be entitled "The Dilapidation Account of A.B., incumbent of ;" and from the sum (if any) so lent by them, they shall forthwith pay and discharge the costs and expenses of and incidental to the preparation and completion of the security.

The governors to keep a dilapidation account.

40. The new incumbent shall, within six calender months next after the date of the order (or within such extended period as hereinafter mentioned), pay to the governors, to be carried to the credit of the said account, such sum (if any) as, together with the sums theretofore carried to the credit of the said account, will make up the sum stated in the order as the cost of the repairs.

New incumbent to pay the balance to the governors.

41. The bishop, if from any special circumstances he think fit, may, upon the application of the new incumbent, enlarge the period within which such incumbent is required to pay such last-mentioned sum for any period not exceeding twelve months from the date of the order; and may authorise the payment of such amount, either in one sum, or by instalments of such amounts and on such days (not being beyond the end of such twelve months) as the bishop shall determine.

Extension of time within which such payment must be made.

42. The new incumbent shall cause the repairs specified in the order to be executed within eighteen months after the date of the order, unless, with the consent of the patron and bishop, he shall decide upon rebuilding the premises in question, in which case the money standing to the credit of his dilapidation account in the books of the governors shall be applied towards the cost of the new building.

Repairs to be executed within eighteen months.

43. If the moneys payable under this Act to the governors by the new incumbent of any benefice shall not be paid by such incumbent before the expiration of the time specified in this Act for such payment to be made, the governors shall give notice thereof to the bishop, and it shall be lawful for the bishop to raise the amount thereof by sequestration of the profits of the benefice.

Payment of money to Governors of Queen Anne's Bounty by new incumbent may be enforced by sequestration.



Execution of Works.

44. Where money is standing to the credit of the dilapidation account of an incumbent required by this Act to execute repairs, such repairs shall be paid for as follows; that is to say, when and as the surveyor shall certify that a specified sum ought to be paid to any person or persons in respect of such works, such certificate shall, when countersigned by the bishop, be delivered to the governors, who shall, on the receipt of such certificate, cause the amount therein specified to be paid to the person or persons named therein as entitled to receive the same out of the moneys standing to the credit of the said dilapidation account, and so, from time to time, until the whole of the repairs shall have been executed, or the moneys standing to the credit of the said account shall have been exhausted; and if any further moneys shall be required for the completion of such repairs, the same shall be paid by the incumbent.

Upon execution of works, money to be paid by governors on receipt of surveyor's certificate.

45. The repairs to be executed in the case of a benefice under sequestration, and the repairs to be executed in the case of the refusal or neglect of the incumbent to execute the same (including rebuilding or repairing in case of fire), shall be executed under the direction of the surveyor, who may employ any builders or contractors to execute the same according to a specification and contract to be prepared by such surveyor; and the builder or contractor executing such works shall be paid for the same as the works proceed, and the surveyor shall from time to time certify the sum to which the builder or contractor is entitled in respect thereof, which certificate shall, when countersigned by the bishop, be delivered to the governors, who shall, on receipt of the same, cause the amount therein specified to be paid to the person or persons named therein as entitled to receive the same out of the moneys standing to the credit of the said dilapidation account, and so from time to time until the whole of the repairs shall have been executed, or the moneys standing to the credit of the said account shall have been exhausted; but neither the governors, the bishop, nor the patron shall incur any liability at law or in equity to any builder or contractor, or otherwise, under or by virtue of any such specification or contract, further than the obligation on the part of the governors

Execution of works if benefice under sequestration, or on refusal of incumbent

to pay the moneys standing to such dilapidation account in manner aforesaid.

Final certificate of completion of works.

46. When the repairs shall have been finished, the surveyor, if the same shall be completed to his satisfaction, shall give a certificate of the same having been completed, which certificate shall be in triplicate; and one of the triplicates shall be delivered to the incumbent or the sequestrator, another registered in the registry of the diocese, and the third delivered to the governors, and such certificate shall be conclusive evidence of the due execution of the prescribed works.

Protection to incumbent from further liability for five years.

47. No further or subsequent report shall be made as to the buildings belonging to the benefice, and specified in the last-mentioned certificate (except at the request of the incumbent himself), before the end of five years from the filing of the said certificate.

If such benefice shall become vacant within such period of five years, the incumbent or his representatives shall not be liable to any claim for dilapidations in respect of the buildings specified in the certificate, except for wilful waste.

The exemption from liability under this present section shall in no case apply to loss or damage by fire where the incumbent at the time of filing the certificate of the due execution of the works shall not have insured, to the satisfaction of the governors, the house of residence and buildings belonging to the benefice in some fit office against loss or damage by fire, in at least three-fifths of the value thereof, and who shall not keep such house and buildings so insured during such period of five years, or until the earlier avoidance of the benefice.

Payment of surveyor for inspection and certificates.

48. The charges of the surveyor for his inspections and reports and certificates made or given by him under the provisions of this Act, and also the fees of the bishop's secretary and registrar, shall, except as otherwise provided by this Act, be paid by the incumbent or by the sequestrator, and shall be a debt due from him or them to the surveyor, secretary, and registrar respectively, and recoverable as such at law and in equity. The sum (if any) which shall have been advanced by the governors in respect of surveyor's charges shall be paid by them to the surveyor.

49. If an inspection shall have been made of any benefice under this Act, and the incumbent liable to execute the prescribed repairs

shall vacate such benefice before the surveyor shall have signed a certificate of the completion of the same, such incumbent, his executors or administrators, shall be liable to the payment of all moneys in respect of such repairs (not previously paid by him to the governors in respect thereof), and of the surveyor's inspection, report, and certificate, which such incumbent would respectively have been liable to pay in case he had not vacated, which moneys shall be a debt due from such incumbent, his executors or administrators, to the next incumbent, and shall be recoverable as such at law or in equity; and such next incumbent, whether he shall recover the same or not, shall be liable to pay all such moneys in the same manner as his predecessor in such incumbency would have been liable to pay in case he had continued to be the incumbent of such benefice; and such next incumbent shall be allowed, with the consent of the patron and bishop, to borrow on the security of the profits of the benefice such sum as he shall fail so to recover, towards meeting such payments as the governors may be willing and able by law to advance on loan for that purpose.

Benefice becoming vacant during repairs, liability of outgoing incumbent or his representatives.

50. If the incumbent liable to execute repairs shall be desirous of altering or remodelling the buildings belonging to the benefice, or any of them, or of rebuilding the same or any of them, so as to render such repairs or any of them impracticable or unnecessary, it shall be lawful for such incumbent, with the consent of the bishop and patron, to execute the proposed works in lieu of such repairs; and in such case the surveyor shall, upon the completion of such works to his satisfaction, give a special certificate, certifying that the same have been completed, which certificate shall be signed in triplicate; and one of such triplicates shall be delivered to the incumbent, and another to the bishop, who shall cause the same to be registered in the registry of the diocese, and another to the governors, and such certificate shall have the same effect as a certificate of the completion of the works specified in the order.

Execution of works other than those specified in surveyor's report. Special certificate of surveyor.

51. If such additional or substituted works shall not render the whole of such repairs impracticable or unnecessary, then so much of the money standing to the credit of the dilapidation account as the surveyor shall certify to be necessary for the execution of the repairs not so

Where such additional works do not render im-

rendered impracticable or unnecessary shall be retained by the governors, and shall be dealt with, as regards certificates and otherwise, in the same manner as if the repairs not so rendered impracticable or unnecessary had been the only repairs specified in the order.

practicable or unnecessary all the works specified in the report.

52. If an incumbent, after having paid to the governors the amount specified in the report, desire to defer the execution of the works specified in the report, or any of them, for a limited period, and the surveyor shall certify in writing that such postponement may be safely made, the bishop, with the consent of the patron, may authorise such postponement, and may require the incumbent to pay to the governors such a sum, annually or in gross, as shall be certified by the surveyor to be proper to meet any probable further dilapidations, and the moneys so paid shall be carried to the credit of his dilapidation account; and if the benefice shall be vacated during the period of postponement, the late incumbent, his executors or administrators, shall not be entitled to be repaid any part of such additional moneys, but he or they shall not be subject to any further claim for dilapidations; and in case of such vacancy, the money paid by him to the governors shall be dealt with as if the succeeding incumbent, upon his succeeding to the benefice, had paid the same in respect of such repairs and dilapidations.

Postponement of works may be allowed on payment of a sum to meet probable further dilapidations.

53. No sum shall be recoverable for dilapidations in respect of any benefice becoming vacant after the commencement of this Act, and to which this Act shall be applicable, unless the claim for such sum be founded on an order made under the provisions of this Act.

No sum recoverable for dilapidations except on a surveyor's report.

As to Insurance.

54. The incumbent of every benefice shall insure, and during his incumbency keep insured, the house of residence and farm and other buildings for the time being standing on the lands belonging to such benefice, and the outbuildings and offices respectively belonging thereto, and also the chancel of the church when the incumbent is liable to repair the chancel, against loss or damage by fire, in some office or offices for insurance against loss or damage by

Insurance of buildings of a benefice by the incumbent.



fire, to be selected by such incumbent, to the satisfaction of the governors, in at least three-fifths of the value thereof.

55. Every such insurance shall be effected in the joint names of the incumbent and the governors, and the incumbent shall cause the receipt for the premium for such insurance for each year to be exhibited at the first visitation of the bishop or archdeacon next ensuing after the same shall become payable; and the following questions shall be added to those annually sent to incumbents under the provisions of the Act of the session of the first and second years of Her Majesty, chapter one hundred and six, that is to say: "In what office and for what amount are the buildings of your benefice insured against fire?" and "What was the amount and date of the last annual payment for such insurance?"

Filing of annual receipts for the premium.

56. In case any building belonging to any benefice, and insured in pursuance of this Act, shall be destroyed or damaged by fire, and the office in which the same shall be insured shall elect to pay the sum insured instead of causing the buildings to be reinstated at the expense of the office, the sum so paid shall be paid to the governors, and dealt with in the same manner as moneys standing to the credit of a dilapidation account.

Sums received from insurance office on destruction of buildings by fire to be expended in restoring them, &c.

57. If, when any building belonging to a benefice shall be destroyed or damaged by fire, such building shall not be insured against loss or damage by fire for an amount sufficient to reinstate and make good the same, the surveyor shall give to the bishop a certificate in writing (in triplicate), signed by such surveyor, specifying the sum which, in his opinion, shall be required, in addition to the insurance-money (if any), for reinstating the buildings so destroyed or damaged, one of which triplicates the bishop shall cause to be filed in the bishop's registry, another to be sent to the incumbent or the sequestrator (if any), and another to the governors; and the incumbent or the sequestrator (if any) shall have the same opportunity of making objections, and the bishop shall have the same power of consulting another surveyor or taking the opinion of counsel, as are provided in the sixteenth section with reference to the cases therein mentioned; and the incumbent of the benefice, if the same shall not be under sequestration, shall pay the amount

Destruction of buildings not insured. Cost of restoring to be paid by the incumbent, and to be recoverable by sequestration.

so specified to the governors within three calendar months next after the date of such certificate; and if such amount shall not be so paid, it shall be lawful for the bishop, at any time after the end of such three calendar months, to raise the same (or so much thereof as shall not be so paid) by sequestration of the profits of the benefice; and the amount so raised shall in like manner be paid to the governors, and the moneys so paid to the governors shall be dealt with in the same manner as moneys standing to the credit of a dilapidation account; and the incumbent shall cause the buildings so destroyed or damaged to be forthwith reinstated, and the costs thereof shall be paid, as the works progress, out of the amount so paid to the governors, on certificates of a surveyor, in the manner hereinbefore specified in regard to repairs directed to be executed by a new incumbent; and if the incumbent shall refuse or neglect to reinstate such buildings, the same may, after the governors have received the necessary amount in manner aforesaid, be repaired and reinstated in manner herein provided in regard to repairs of buildings belonging to a benefice under sequestration.

In case the benefice shall be under sequestration, the sum stated in the certificate of the surveyor shall be a charge upon the moneys from time to time received by the sequestrator in respect of the net profits or income of the benefice as mentioned in the twentieth section of this Act, and the provisions contained in the said twentieth section and in the twenty-first section with respect to the payment of the profits of the benefice to the governors and the application of the money shall apply to this section as if the provisions therein had, *mutatis mutandis*, been repeated herein.

Miscellaneous.

Providing for case of buildings of benefice when let on lease.

58. The provisions contained in this Act in regard to buildings standing on the lands belonging to any benefice shall not be applicable to the buildings (if any) belonging to the benefice, which shall be comprised in any lease, for years or lives, for the time being subsisting, so long as such lease shall be subsisting, except so far as the lessee shall not, by virtue of such lease, be liable to insure, rebuild, or repair such buildings; but it shall be lawful for the surveyor to inspect the buildings comprised in any such lease.

59. Every incumbent or lessee alleging that any buildings



belonging to a benefice are exempt from the provisions of this Act shall produce to the surveyor for his perusal the counterpart of the lease, or the lease in respect of which such exemption is claimed, unless such counterpart shall already have been deposited in the bishop's registry, or with the Ecclesiastical Commissioners for England.

When exemption claimed lease or counterpart to be produced.

60. Every sum of money by this Act raiseable by the bishop by sequestration during an incumbency shall be deemed a debt due from and payable by the incumbent; and if any money payable under this Act by an incumbent shall not be recovered by sequestration or otherwise during his incumbency, the liability of such incumbent thereto and of his representatives shall continue and be in no way affected; and in case of his death while he shall be incumbent, the same money, or so much thereof as shall remain due, shall be paid to the parties entitled under this Act to receive the same by his representatives out of his estate and effects.

Remedy on death of incumbent.

61. All moneys which respectively would have been raiseable by the bishop by sequestration during an incumbency, and which shall be paid by a succeeding incumbent, or shall be recovered by sequestration during such succeeding incumbency, shall be a debt due from such prior incumbent or his estate to the incumbent by whom, or out of whose income derived from the benefice, the same shall be paid, and shall be recoverable as such at law or in equity.

Moneys paid to bishop by succeeding incumbent to be a debt due from prior incumbent.

62. A security made under the provisions of this Act may be in the form contained in the first schedule hereto, or in such other form as the governors may approve, and the certificate of the treasurer to the governors of any sum having been placed to the credit of the account mentioned in the certificate shall be conclusive evidence of the fact of the said sum having been so placed; and the governors shall, as regards the recovery of the sums due upon the said security, have the same remedies against the incumbent and his successors, and against the property comprised in the security, as if the advance had been made for repairing or rebuilding under the provisions of the Acts contained in the second schedule hereto, and the receipt of the treasurer for the time being to the said governors shall be a discharge for all moneys paid to them in pursuance of the provisions of this Act.

Form of security.

63. Before the governors shall lend any money on the security of the possessions of the benefice under the provisions of this Act, they shall require the incumbent to furnish them with a just and particular account in writing, signed by him, and verified by his oath or statutory declaration, of the annual profits of the living, and shall procure the consent in writing of the bishop and patron under their respective hands, or, if the patron shall be a corporation aggregate, under the common seal of such corporation. Such consent may be given in the form specified in that behalf in the Acts contained in the second schedule hereto, or in such other form as the governors may approve.

Incumbent to furnish particulars of the value of the benefice.

Patron and ordinary to consent.

64. The provisions of the Acts contained in the second schedule hereto, and of the Acts referring to or amending the same, with respect to the registration of mortgages, and to the proportioning of payments in the case of death or avoidance, and to stamps and fees of offices, and to the priority of sequestrations, shall apply to securities made under the authority of this Act as if the said provisions had, *mutatis mutandis*, been repeated herein.

Provisions of Gilbert Acts to apply to the securities.

65. All moneys standing to the credit of a dilapidation account shall, in the meantime, and until such moneys be required for the purposes of this Act, be invested by the governors in the manner in which they are authorised to invest other moneys held by them; and if any surplus shall remain of moneys standing to the credit of a dilapidation account after satisfying the requirements of this Act, such surplus shall be applied in discharge of any principal sum owing on the security of a mortgage made by the incumbent under the provisions of this Act; and if there shall be no such sum, or if the surplus be more than sufficient for the discharge of such sum, such surplus, or further surplus, shall be paid to the incumbent or to the sequestrators. The governors may retain, to meet the office expenses incurred by reason of this Act, a percentage of the sums paid to them under the provisions of this Act, to be regulated according to a table or scale to be prepared by the governors, and to be subject to the approval of the Lords Commissioners of Her Majesty's Treasury; and the governors may, with the like approval, from time to time alter, amend, add to, or

Moneys standing to the credit of a dilapidation account to be invested.

Application of income.

Payment of expenses.



reduce such table or scale; and every such table or scale, and every such alteration, amendment, addition, or reduction in, to, or of the same, shall be published in the *London Gazette*, and shall be laid before Parliament.

Providing for death or change of surveyor during repairs.

66. In case of the death, removal from office, or resignation of a surveyor after making an inspection and before granting his final certificate of the completion of the necessary repairs, the previous acts of such surveyor in regard to such inspection, including his report (if any), shall be adopted by the surveyor appointed to act in his place, who shall proceed in the matter of such inspection, report, and certificate in the same manner as if the inspection had originally been made by him.

Power of surveyor, &c. to enter and inspect, &c. at seasonable times.

67. It shall be lawful for any surveyor employed under this Act, his servants and workmen, for the purposes of this Act to enter into the buildings belonging to any benefice, and to inspect and examine the same, and also any works in progress under this Act, and, in the case of any benefice under sequestration, or of any repairs to be executed or buildings to be reinstated in consequence of the refusal or neglect of the incumbent, for all persons authorised by the surveyor to enter into the buildings belonging to such benefice, and to execute the works by this Act authorised; but no inspection shall be made under this Act except at seasonable times and within reasonable hours.

Limitations, &c. of actions.

68. No proceedings shall be commenced against any surveyor or other person acting under the authority of this Act for any alleged irregularity or trespass, or other act or thing done or omitted by him under this Act, unless notice in writing is given by the intending plaintiff or prosecutor to the intended defendant, one month at least before the commencement of the proceeding, nor unless the proceeding is commenced within three months next after the act or thing complained of is done or omitted, or, in case of a continuation of damage, within three months next after the doing of such damage has ceased. The plaintiff or prosecutor shall not succeed in any such proceeding, if tender of sufficient amends, including the reasonable costs of plaintiff or prosecutor, is made by the defendant before the commencement of the proceeding; and in case no tender has been made, the defendant may, by leave of the court in which the proceeding is taken, at any time pay into such court such sum

of money as he may think fit, whereupon such proceeding and order shall be had and made in and by the court as may be had and made on the payment of money into court in an ordinary suit.

Form of bishop's order and delivery of notices.

69. Every consent by authority from a bishop under this Act shall be in writing under his hand, and all notices, letters, reports, and other documents by this Act directed to be sent, delivered, or otherwise notified or given to or left with any bishop, incumbent, officiating clergyman, or person, shall be deemed to have been duly sent, delivered, notified, given, or left respectively, if sent through the post in a prepaid letter, addressed, in the case of an incumbent or officiating minister, to the house of residence of the benefice, or, if there shall be no such house of residence, then to one of the churchwardens at his usual place of residence, and in all other cases to the usual or last-known place of residence in England of the party.

Existing incumbents (if the bishop consents) not liable to dilapidations for substitution of buildings of equal or greater value.

No existing incumbent liable for dilapidations as to buildings pulled down by prior incumbents, unless amounts recoverable from prior incumbent.

70. If an incumbent holding a benefice at the time of the commencement of this Act shall, prior thereto (without due authority), have caused any buildings belonging to such benefice to be pulled down, and shall have substituted other buildings of equal or greater value, such incumbent shall (if the bishop of the diocese consent) not be liable to dilapidations in respect of the buildings so pulled down, provided such substituted buildings shall have been insured pursuant to this Act; and no incumbent holding a benefice at the time of the commencement of this Act shall be liable for dilapidations in respect of any buildings which shall have been pulled down by a preceding incumbent, unless the incumbent so holding such benefice shall have received or shall be entitled to recover at law or in equity from the last-preceding incumbent or his estate the amount chargeable on account of such dilapidations, and in such case the liability of the existing incumbent shall be limited to the amount so received or recoverable at law or in equity.

Removal of unnecessary part of any glebe-house.

71. Wherever it shall appear that any building belonging to or forming part of any house of residence is unnecessary, it shall be lawful for the bishop, upon the application of the incumbent, and with the consent

in writing of the patron of the benefice, to authorise by a written instrument under his hand the removal of the said building; and the proceeds, if any, of such removal shall be applied to the improvement of the benefice in such manner as the bishop of the diocese and the patron of the benefice may agree on.

72. Nothing in this Act contained shall be construed to lessen or destroy any authority or power which, before the passing of this Act, any bishop or archdeacon or other ordinary possessed in respect of requiring the repairs of any ecclesiastical buildings to be executed. **Not to affect existing powers of bishop, &c.**

73. Notwithstanding anything contained in this Act, all the powers and authorities contained in the Acts specified in the second schedule hereto, and in any Act or Acts amending or referring to the same, shall be exerciseable either separately or concurrently with the powers of this Act. **Saving powers contained in Acts specified in second schedule.**

SCHEDULES.

FIRST SCHEDULE.

Form of Mortgage.

This indenture, made the day of , between *A. B.*, incumbent of the benefice of , in the county of and diocese of , of the one part, and the Governors of the Bounty of Queen Anne for the augmentation of the maintenance of the poor clergy of the other part: Whereas the said governors, pursuant to "The Ecclesiastical Dilapidations Act, 1871," upon the request of the said *A. B.*, and with the consent of the bishop and patron (testified by their having signed [*or* sealed] the instrument of consent hereto annexed), have agreed to advance the sum of pounds upon the security of the said benefice: Now this indenture witnesseth that the said *A. B.*, in consideration of the sum of pounds having been carried in the books of the said governors to the credit of an account entitled "The Dilapidation Account of *A. B.*, Incumbent of ,"

as evidenced by the certificate hereupon endorsed and signed by the treasurer to the said governors, doth hereby grant unto the said governors all the glebe-lands, tithes, rents, rentcharges, moduses, compositions for tithe, salaries, stipends, fees, gratuities, and other emoluments and profits whatsoever arising, coming, growing, renewing, or payable to the incumbent of the said benefice in respect thereof, with all and every their rights, privileges, and appurtenances thereunto belonging, To have, hold, receive, and take the said premises, with their appurtenances, unto the said governors from henceforth for and during the term of thirty-five years, in as full, ample, and beneficial manner, and with such remedies and powers for obtaining and recovering the same, and every part thereof, to all intents and purposes, as the said incumbent or his successors could or might or ought to have held, enjoyed, received, and taken the same if these presents had not been made: And the said *A. B.* for himself, his heirs, executors, and administrators, doth hereby covenant with the said governors that the said *A. B.*, during the time he shall continue incumbent of the said benefice, shall and will well and truly pay or cause to be paid unto the said governors interest for the said sum of pounds, or so much thereof as shall remain due, at the end of every year, to be computed from the day of the date of these presents, after the rate of pounds per centum per annum, by yearly payments, the first of the said payments to be made on the day of next; and also shall and will, from and after the expiration of one year from the day of the date of these presents, in each and every year during such time as aforesaid, well and truly pay or cause to be paid unto the said governors one equal thirtieth part of the said principal sum of pounds, the first of such payments to be made on the day of , 18 , and shall and will continue such respective payments of the said interest, and on account of the said principal money, so long as he shall continue incumbent of the said benefice, or so long as during his incumbency anything shall remain due upon the security of these presents: Provided always, and these presents are upon this condition, that if the said *A. B.* and his successors shall well and truly pay or cause to be paid the said principal money and interest for the same, in manner and at the times aforesaid, according to the true intent and meaning of the said Act and of these presents, and also all costs and charges which shall have been occasioned by



the nonpayment thereof, these presents and everything herein contained shall cease and be void: Provided also, that it shall and may be lawful for the said *A. B.* and his successors peaceably and quietly to hold, occupy, possess, and enjoy all and singular the said glebe-lands, tithes, rents, rentcharges, moduses, composition for tithes, stipends, fees, gratuities, and other emoluments and profits whatsoever arising or to arise from or in respect of the said benefice, until default shall be made by him or them, respectively, in the payment of the interest and principal, or some part thereof, at the times and in the manner aforesaid. In witness, &c.

SECOND SCHEDULE.

17 Geo. III. ch. 53.
21 Geo. III. ch. 66.
7 Geo. IV. ch. 66.
1 & 2 Vict. ch. 23.
28 & 29 Vict. ch. 69.

☞ This Act is very slightly modified in the matter of loans from Queen Anne's Bounty by 35 & 36 Vict. c. 96.

V.

THE SEQUESTRATION ACT OF 1871.
34 & 35 Vict. Chap. 45.

An Act for amending the Law relating to Sequestration of Ecclesiastical Benefices. [13th July, 1871.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

On sequestration bishop to appoint curate and assign stipend, as defined in 34 & 35 Vict. c. 44.

1. Where, after the thirty-first day of August one thousand eight hundred and seventy-one, under a judgment recovered against the incumbent of a benefice as defined in "The Incumbents' Resignation Act, 1871," or under the bankruptcy of such incumbent, a sequestration issues, and the same remains in force for a period of six months, the bishop of the diocese shall, from and after the expiration of such period of six months, and as long as the sequestration remains in force, take order for the due performance of the services of the church of the benefice, and shall have power to appoint and license for this purpose such curate or curates, or additional curate or curates, as the case may require, with such stipend in each case as the bishop thinks fit, the amount thereof to be specified in the license, and the bishop may at any time revoke any such appointment and license: Provided always, that such stipend or stipends shall not exceed in the whole the following sums; that is to say, if the population shall not exceed five hundred, the sum of two hundred pounds yearly; if the population shall exceed five hundred but not one thousand, the sum of three hundred pounds yearly; if the population shall exceed one thousand but not three thousand, the sum of five hundred pounds yearly; if the population shall exceed three thousand, the sum of six hundred pounds yearly: Provided also, that such stipend or stipends shall not



exceed in the whole two-thirds of the annual value of the benefice, as defined in the last-mentioned Act.

2. Such of the provisions of the Act specified in the schedule to this Act as are described in Part I. of that schedule, and all provisions of that Act relative thereto, shall have effect for purposes of this Act as if they were here re-enacted. **Application of enactments in Schedule, Part I.**

3. Every stipend assigned under this Act shall be paid by the sequestrator out of moneys coming to his hands under the sequestration, as long as the sequestration is in force, in priority to all sums payable by virtue of the judgment or the bankruptcy under which the sequestration issues, but not in priority of liabilities in respect of charges on the benefice. **Payment of stipend.**

4. Such of the provisions of the Act specified in the schedule to this Act as are described in Part II. of that schedule, and all provisions of that Act relative thereto, shall apply in every case where a curate is appointed under this Act. **Application of enactments in Schedule, Part II.**

5. In case any such sequestration remains in force for more than six months, the bishop, if it appears to him that scandal or inconvenience is likely to arise from the incumbent continuing to perform the services of the church while the sequestration remains in force, may, from and after the expiration of such period, inhibit the incumbent from performing any services of the church within the diocese as long as the sequestration shall remain in force, and the bishop may at any time withdraw such inhibition. **Power for bishop to inhibit in certain cases.**

6. During such time as any sequestration remains in force, the incumbent shall be absolutely disabled from presenting or nominating to any benefice then vacant of which he may be patron in right of the benefice under sequestration, and the right of presentation or nomination to such vacant benefice shall be exercised by the bishop of the diocese in which such vacant benefice is locally situate. **Presentation to benefices suspended during sequestration**

7. During the continuance of any sequestration, it shall not be lawful for the incumbent of the benefice under sequestration to accept or be instituted or licensed to any other benefice or preferment, the acceptance of or institution or licensing to which would avoid or vacate **Incumbent of sequestrated benefice not to**

accept other benefice but with leave.

the benefice so under sequestration, unless with the consent in writing of the bishop of the diocese and the sequestrator.

Extent of Act.

8. This Act shall not extend to Scotland or Ireland.

Short title.

9. This Act may be cited as "The Sequestration Act, 1871."

THE SCHEDULE.

1 & 2 Vict. c. 106.—An Act to abridge the Holding of Benefices in Plurality, and to make Better Provision for the Residence of the Clergy.

ENACTMENTS APPLIED.

PART I.

Section one hundred and seven.	Provisions relating to bishops to apply to archbishops in their own dioceses.
Section one hundred and eight.	Power of archbishops and bishops as to exempt or peculiar benefices, &c.
Section one hundred and nine.	Where jurisdiction is given to bishop, &c. all concurrent jurisdiction to cease.

PART II.

Section seventy-five.	Non-resident incumbents neglecting to appoint curates, the bishop to appoint — As far as the same relates to the residence of curates.
Section seventy-six.	Curate to reside on benefices under certain circumstances.
Section eighty-two.	Fee for licence.
Section ninety-seven.	Curate not to quit curacy without three months' notice to incumbent and bishop, under a penalty.
Section one hundred and two.	Licences to curates and revocations thereof to be entered in the registry of the diocese.



VI.

THE PUBLIC WORSHIP REGULATION ACT OF 1874.
37 & 38 Vict. Chap. 85.

An Act for the better administration of the Laws respecting the regulation of Public Worship. [7th August, 1874.]

WHEREAS it is expedient that in certain cases further regulations should be made for the administration of the laws relating to the performance of divine service according to the use of the Church of England:

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Short title.

1. This Act may be cited as "The Public Worship Regulation Act, 1874."

Commencement of Act.

2. This Act shall come into operation on the first day of July one thousand eight hundred and seventy-five, except where expressly herein-after provided.

Extent of Act.

3. This Act shall extend to that part of the United Kingdom called England, to the Channel Islands, and the Isle of Man.

Proceedings under this Act not to be deemed proceedings under 3 & 4 Vict. c. 86, s. 23.

4. Proceedings taken under this Act shall not be deemed to be such proceedings as are mentioned in the Act of the third and fourth year of the reign of Her Majesty, chapter eighty-six, section twenty-three.

Saving of jurisdiction.

5. Nothing in this Act contained, save as herein expressly provided, shall be construed to affect or repeal any jurisdiction which may now be in force for the due administration of ecclesiastical law.

Interpretation of terms.

6. In this Act the following terms shall, if not inconsistent with the context, be thus interpreted—



"Bishop." The term "bishop" means the archbishop or bishop of the diocese in which the church or burial ground is situate to which a representation relates:

"Book of Common Prayer." The term "Book of Common Prayer" means the book annexed to the Act of the fourteenth year of the reign of King Charles the Second, chapter four, intituled "The Book of Common Prayer, and Administration of the Sacraments, and other Rites and Ceremonies of the Church, according to the use of the Church of England; together with the Psalter or Psalms of David, pointed as they are to be sung or said in churches; and the form or manner of making, ordaining, and consecrating of Bishops, Priests, and Deacons;" together with such alterations as have from time to time been or may hereafter be made in the said book by lawful authority:

"Burial ground." The term "burial ground" means any churchyard, cemetery, or burial ground, or the part of any cemetery or burial ground, in which, at the burial of any corpse therein, the order for the burial of the dead contained in the Book of Common Prayer is directed by law to be used:

"Church." The term "church" means any church, chapel, or place of public worship in which the incumbent is by law or by the terms of license from the bishop required to conduct divine service according to the Book of Common Prayer:

"Diocese." The term "diocese" means the diocese in which the church or burial ground is situate to which a representation relates, and comprehends all places which are situate within the limits of such diocese:

"Incumbent." The term "incumbent" means the person or persons in holy orders legally responsible for the due performance of divine service in any church, or of the order for the burial of the dead in any burial ground:

"Parish." The term "parish" means any parish, ecclesiastical district, chapelry, or place, over which any incumbent has the exclusive cure of souls:

"Parishioner." The term "parishioner" means a male person of full age who before making any representation under this Act has transmitted to the bishop under his hand the declaration contained in Schedule (A.) to this Act, and who has, and for one year next before taking any proceeding under this Act has had, his usual place of abode in the parish within which the



church or burial ground is situate, or for the use of which the burial ground is legally provided, to which the representation relates:

The term "barrister-at-law" shall in the Isle of Man include advocate: "Barrister-at-law."

The term "rules and orders" means the rules and orders framed under the provisions of this Act. "Rules and orders."

7. The Archbishop of Canterbury and the Archbishop of York may, but subject to the approval of Her Majesty to be signified under Her Sign Manual, appoint from time to time a barrister-at-law who has been in actual practice for ten years, or a person who has been a judge of one of the Superior Courts of Law or Equity, or of any court to which the jurisdiction of any such court has been or may hereafter be transferred by authority of Parliament, to be, during good behaviour, a judge of the Provincial Courts of Canterbury and York, herein-after called the judge. Appointment and duties of judge.

If the said archbishops shall not, within six months after the passing of this Act, or within six months after the occurrence of any vacancy in the office, appoint the said judge, Her Majesty may by Letters Patent appoint some person, qualified as aforesaid, to be such judge.

Whensoever a vacancy shall occur in the office of official principal of the Arches Court of Canterbury, the judge shall become *ex-officio* such official principal, and all proceedings thereafter taken before the judge in relation to matters arising within the province of Canterbury shall be deemed to be taken in the Arches Court of Canterbury; and whensoever a vacancy shall occur in the office of official principal or auditor of the Chancery Court of York, the judge shall become *ex-officio* such official principal or auditor, and all proceedings thereafter taken before the judge in relation to matters arising within the province of York shall be deemed to be taken in the Chancery Court of York; and whensoever a vacancy shall occur in the office of Master of the Faculties to the Archbishop of Canterbury, such judge shall become *ex-officio* such Master of the Faculties.

Every person appointed to be a judge under this Act shall be a member of the Church of England, and shall, before entering on his office, sign the declaration in Schedule (A.) to this Act; and if at any time any such judge shall cease to be a member of the Church, his office shall thereupon be vacant.

This section shall come into operation immediately after the passing of this Act.

Representation by archdeacon, churchwarden, parishioners, or inhabitants of diocese.

8. If the archdeacon of the archdeaconry, or a churchwarden of the parish, or any three parishioners of the parish, within which archdeaconry or parish any church or burial ground is situate, or for the use of any part of which any burial ground is legally provided, or in case of cathedral or collegiate churches, any three inhabitants of the diocese, being male persons of full age, who have signed and transmitted to the bishop under their hands the declaration contained in Schedule (A.) under this Act, and who have, and for one year next before taking any proceeding under this Act have had, their usual place of abode in the diocese within which the cathedral or collegiate church is situated, shall be of opinion,—

(1.) That in such church any alteration in or addition to the fabric, ornaments, or furniture thereof has been made without lawful authority, or that any decoration forbidden by law has been introduced into such church; or,

(2.) That the incumbent has within the preceding twelve months used or permitted to be used in such church or burial ground any unlawful ornament of the minister of the church, or neglected to use any prescribed ornament or vesture; or,

(3.) That the incumbent has within the preceding twelve months failed to observe, or to cause to be observed, the directions contained in the Book of Common Prayer relating to the performance, in such church or burial ground, of the services, rites, and ceremonies ordered by the said book, or has made or permitted to be made any unlawful addition to, alteration of, or omission from such services, rites, and ceremonies,—

such archdeacon, churchwarden, parishioners, or such inhabitants of the diocese, may, if he or they think fit, represent the same to the bishop, by sending to the bishop a form, as contained in Schedule (B.) to this Act, duly filled up and signed, and accompanied by a declaration made by him or them under the Act of the fifth and sixth year of the reign of King William the Fourth, chapter sixty-two, affirming the truth of the statements contained in the representation: Provided, that no proceedings shall be taken under this Act as regards any alteration in or addition to the fabric of a church if such alteration or addition has been completed five years before the commencement of such proceedings.



9. Unless the bishop shall be of opinion, after considering the whole circumstances of the case, that proceedings should not be taken on the representation (in which case he shall state in writing the reason for his opinion, and such statement shall be deposited in the registry of the diocese, and a copy thereof shall forthwith be transmitted to the person or some one of the persons who shall have made the representation, and to the person complained of), he shall within twenty-one days after receiving the representation transmit a copy thereof to the person complained of, and shall require such person, and also the person making the representation, to state in writing within twenty-one days whether they are willing to submit to the directions of the bishop touching the matter of the said representation, without appeal; and if they shall state their willingness to submit to the directions of the bishop without appeal, the bishop shall forthwith proceed to hear the matter of the representation in such manner as he shall think fit, and shall pronounce such judgment and issue such monition (if any) as he may think proper, and no appeal shall lie from such judgment or monition. Proceedings on representation.

Provided, that no judgment so pronounced by the bishop shall be considered as finally deciding any question of law so that it may not be again raised by other parties.

The parties may, at any time after the making of a representation to the bishop, join in stating any questions arising in such proceedings in a special case signed by a barrister-at-law for the opinion of the judge, and the parties after signing and transmitting the same to the bishop may require it to be transmitted to the judge for hearing, and the judge shall hear and determine the question or questions arising thereon, and any judgment pronounced by the bishop shall be in conformity with such determination.

If the person making the representation and the person complained of shall not, within the time aforesaid, state their willingness to submit to the directions of the bishop, the bishop shall forthwith transmit the representation in the mode prescribed by the rules and orders to the archbishop of the province, and the archbishop shall forthwith require the judge to hear the matter of the representation at any place within the diocese or province, or in London or Westminster.

The judge shall give not less than twenty-eight days' notice to the parties of the time and place at which he will proceed to hear the

matter of the said representation. The judge before proceeding to give such notice shall require from the person making the representation such security for costs as the judge may think proper, such security to be given in the manner prescribed by the rules and orders.

The person complained of shall within twenty-one days after such notice transmit to the judge, and to the person making the representation, a succinct answer to the representation, and in default of such answer he shall be deemed to have denied the truth or relevancy of the representation.

In all proceedings before the judge under this Act the evidence shall be given *vivâ voce*, in open court, and upon oath; and the judge shall have the powers of a court of record, and may require and enforce the attendance of witnesses, and the production of evidences, books, or writings, in the like manner as a judge of one of the superior courts of law or equity, or of any court to which the jurisdiction of any such court has been or may hereafter be transferred by authority of Parliament.

Unless the parties shall both agree that the evidence shall be taken down by a shorthand writer, and that a special case shall not be stated, the judge shall state the facts proved before him in the form of a special case, similar to a special case stated under the Common Law Procedure Acts, 1852–1854.

The judge shall pronounce judgment on the matter of the representation, and shall deliver to the parties, on application, and to the bishop, a copy of the special case, if any, and judgment.

The judge shall issue such monition (if any) and make such order as to costs as the judgment shall require.

Upon every judgment of the judge, or monition issued in accordance therewith, an appeal shall lie, in the form prescribed by rules and orders, to Her Majesty in Council.

The judge may, on application in any case, suspend the execution of such monition pending an appeal, if he shall think fit.

Registrar of the diocese to perform duties under the Act.

10. The registrar of the diocese, or his deputy duly appointed, shall perform such duties in relation to this Act and shall receive such fees as may be prescribed by the rules and orders.

Parties may appear in person or by counsel, &c.

11. In any proceedings under this Act either party may appear either by himself in person or by counsel, or by any proctor or any attorney or solicitor.



12. For the purpose of an appeal to Her Majesty in Council under this Act, the special case settled by the judge, or a copy of the shorthand writer's notes, as the case may be, shall be transmitted in the manner prescribed by rules and orders, and no fresh evidence shall be admitted upon appeal except by the permission of the tribunal hearing the appeal. No fresh evidence to be admitted on appeal.

13. Obedience by an incumbent to a monition or order of the bishop or judge, as the case may be, shall be enforced, if necessary, in the manner prescribed by rules and orders, by an order inhibiting the incumbent from performing any service of the church or otherwise exercising the cure of souls within the diocese for a term not exceeding three months; provided that at the expiration of such term the inhibition shall not be relaxed until the incumbent shall, by writing under his hand, in the form prescribed by the rules and orders, undertake to pay due obedience to such monition or order, or to the part thereof which shall not have been annulled; provided that if such inhibition shall remain in force for more than three years from the date of the issuing of the monition, or from the final determination of an appeal therefrom, whichever shall last happen, or if a second inhibition in regard to the same monition shall be issued within three years from the relaxation of an inhibition, any benefice or other ecclesiastical preferment held by the incumbent in the parish in which the church or burial ground is situate, or for the use of which the burial ground is legally provided, in relation to which church or burial ground such monition has been issued as aforesaid, shall thereupon become void, unless the bishop shall, for some special reason stated by him in writing, postpone for a period not exceeding three months the date at which, unless such inhibition be relaxed, such benefice or other ecclesiastial preferment shall become void as aforesaid; and upon any such avoidance it shall be lawful for the patron of such benefice or other ecclesiastical preferment to appoint, present, collate, or nominate to the same as if such incumbent were dead; and the provisions contained in the Act of the first and second year of the reign of Her Majesty, chapter one hundred and six, section fifty-eight, in reference to notice to the patron and as to lapse, shall be applicable to any benefice or other ecclesiastical preferment avoided under this Act; and it shall not be lawful for the patron at any time to appoint, present, collate, or nominate to such benefice or such Inhibition of incumbent.

other ecclesiastical preferment the incumbent by whom the same was avoided under this Act.

The bishop may, during such inhibition, unless he is satisfied that due provision is otherwise made for the spiritual charge of the parish, make due provision for the service of the church and the cure of souls, and it shall be lawful for the bishop to raise the sum required from time to time for such provision by sequestration of the profits of such benefice or other ecclesiastical preferment.

Any question as to whether a monition or order given or issued after proceedings before the bishop or judge, as the case may be, has or has not been obeyed shall be determined by the bishop or the judge, and any proceedings to enforce obedience to such monition or order shall be taken by direction of the judge.

Faculty not necessary in certain cases.

14. It shall not be necessary to obtain a faculty from the ordinary in order lawfully to obey any monition issued under this Act, and if the judge shall direct in any monition that a faculty shall be applied for, such fees only shall be paid for such faculty as may be directed by the rules and orders; provided that nothing in this Act contained shall be construed to limit or control the discretion vested by law in the ordinary as to the grant or refusal of a faculty: Provided also, that a faculty shall, on application, be granted, if unopposed, on payment of such a fee (not exceeding two guineas) as shall be prescribed by the rules and orders, in respect of any alteration in or addition to the fabric of any church, or in respect of any ornaments or furniture, not being contrary to law, made or existing in any church at the time of the passing of this Act.

Service of notices.

15. All notices and other documents directed to be given to any person under this Act shall be given in the manner prescribed by rules and orders.

Substitute for bishop when patron, or in case of illness.

16. If any bishop shall be patron of the benefice or of any ecclesiastical preferment held by the incumbent respecting whom a representation shall have been made, or shall be unable from illness to discharge any of the duties imposed upon him by this Act in regard to any representation, the archbishop of the province shall act in the place of such bishop in all matters thereafter arising in relation to such representation; and if any archbishop shall be patron of the benefice or of any ecclesiastical preferment held by the incumbent respecting



whom a representation shall have been made, or shall be unable from illness to discharge any of the duties imposed upon him by this Act in regard to any representation, Her Majesty may, by Her Sign Manual, appoint an archbishop or bishop to act in the place of such archbishop in all matters thereafter arising in relation to such representation.

Provisions relating to cathedral or collegiate church.

17. The duties appointed under this Act to be performed by the bishop of the diocese shall in the case of a cathedral or collegiate church be performed by the visitor thereof.

If any complaint shall be made concerning the fabric, ornaments, furniture, or decorations of a cathedral or collegiate church, the person complained of shall be the dean and chapter of such cathedral or collegiate church, and in the event of obedience not being rendered to a monition relating to the fabric, ornaments, furniture, or decorations of such cathedral or collegiate church, the visitor or the judge, as the case may be, shall have power to carry into effect the directions contained in such monition, and, if necessary, to raise the sum required to defray the cost thereof by sequestration of the profits of the preferments held in such cathedral or collegiate church by the dean and chapter thereof.

If any complaint shall be made concerning the ornaments of the minister in a cathedral or collegiate church, or as to the observance therein of the directions contained in the Book of Common Prayer, relating to the performance of the services, rites, and ceremonies ordered by the said book, or as to any alleged addition to, alteration of, or omission from such services, rites, and ceremonies in such cathedral or collegiate church, the person complained of shall be the clerk in holy orders alleged to have offended in the matter complained of; and the visitor or the judge, as the case may be, in the event of obedience not being rendered to a monition, shall have the same power as to inhibition, and the preferment held in such cathedral or collegiate church by the person complained of shall be subject to the same conditions as to avoidance, notice, and lapse, and as to any subsequent appointment, presentation, collation, or nomination thereto, and as to due provision being made for the performance of the duties of such person, as are contained in this Act concerning an incumbent to whom a monition has been issued, and concerning any benefice or other ecclesiastical preferment held by such incumbent.

Limitation proceedings against incumbent.

18. When a sentence has been pronounced by consent, or any suit or proceeding has been commenced against any incumbent under the Act of the third and fourth year of the reign of Her Majesty, chapter eighty-six, he shall not be liable to proceedings under this Act in respect of the same matter; and no incumbent proceeded against under this Act shall be liable to proceedings under the said Act of the third and fourth year of the reign of Her Majesty, in respect of any matter upon which judgment has been pronounced under this Act.

Rules for settling procedure and fees under this Act.

19. Her Majesty may by Order in Council, at any time either before or after the commencement of this Act, by and with the advice of the Lord High Chancellor, the Lord Chief Justice of England, the judge to be appointed under this Act, and the archbishops and bishops who are members of Her Majesty's Privy Council, or any two of the said persons, one of them being the Lord High Chancellor or the Lord Chief Justice of England, cause rules and orders to be made for regulating the procedure and settling the fees to be taken in proceedings under this Act, so far as the same may not be expressly regulated by this Act, and from time to time alter or amend such rules and orders. All rules and orders made in pursuance of this section shall be laid before each House of Parliament within forty days after the same are made, if Parliament is then sitting, or if not, within forty days after the then next meeting of Parliament; and if an address is presented to Her Majesty by either of the said Houses within the next subsequent forty days on which the House shall have sat praying that any such rules may be annulled, Her Majesty may thereupon by Order in Council annul the same, and the rules and orders so annulled shall thenceforth become void, without prejudice to the validity of any proceedings already taken under the same.



SCHEDULES REFERRED TO IN THE FOREGOING ACT.

SCHEDULE (A.)

I do hereby solemnly declare that I am a member of the Church of England as by law established.

Witness my hand this day of

SCHEDULE (B.)

"PUBLIC WORSHIP REGULATION ACT, 1874."

To the Right Rev. Father in God, *A.*, by Divine permission Lord Bishop of *B.*

I [We], *C.D.*, Archdeacon of the archdeaconry of , [*or* a churchwarden *or* three parishioners of the parish of *E.*], in your Lordship's diocese, do hereby represent that [*the person or persons complained of*] has *or* have [*state the matter to be represented; if more than one, then under separate heads*].

Dated this day of 18 .

(Signed) *C.D.*





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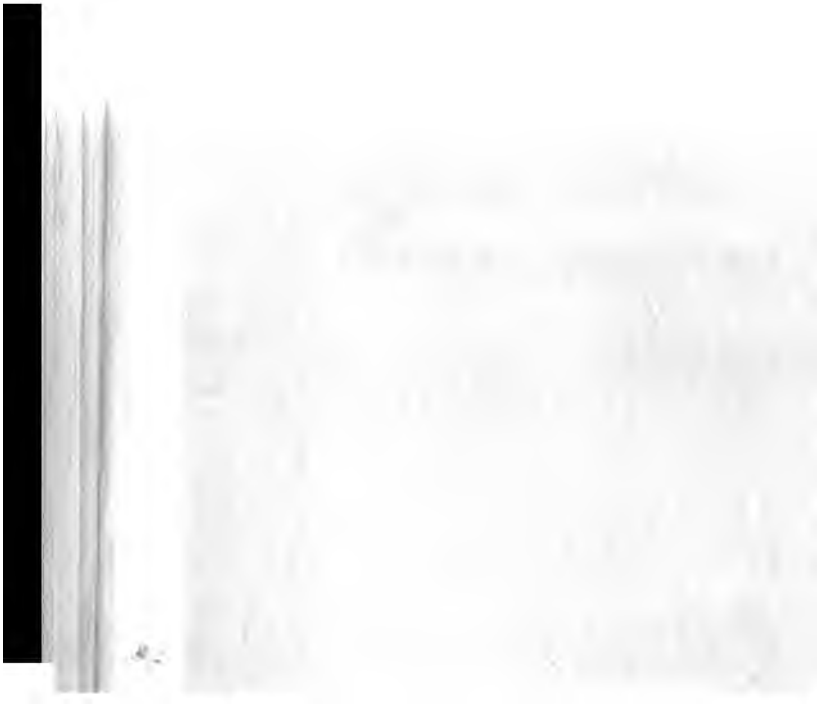
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